**IN THE SUPREME COURT OF NEW SOUTH WALES** 2017/345592

**REGISTRY: SYDNEY**

**DIVISION: EQUITY**

**IN THE MATTER OF SURFSTITCH GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 602 288 004 AND ANOTHER**

**JOHN RICHARD PARK AND JOSEPH RONALD HANSELL IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF SURFSTITCH GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 602 288 004 AND ANOTHER**

Plaintiffs

**AFFIDAVIT**

Affidavit of: Dawna Kathleen Wright

Address: c/- FTI Consulting, Bourke Place, Level 21/600 Bourke St, Melbourne VIC 3000

Occupation: Forensic Accountant

Date: 15 May 2020

On 15 May 2020, I, **DAWNA KATHLEEN WRIGHT**, of c/- FTI Consulting, Bourke Place, Level 21/600 Bourke St, Melbourne in the state of Victoria, affirm:

**Introduction**

1 I am a Senior Managing Director and leader of the Australian Forensic Accounting and Advisory Services practice of FTI Consulting.

2 I have over 25 years of experience in auditing and forensic accounting, including several years as a partner leading the Victorian Forensic practice at Deloitte.

3 I specialise in the interpretation of complex data and I have acted as an expert witness with respect to the calculation of losses on behalf of plaintiffs and defendants in a number of shareholder class actions.

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**Signed:** **Taken by:**

Filed on behalf of the Plaintiffs by:
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Matter no: 602-0027122

## DOCAs & Loss Methodology

4 I was instructed by John Park and Joseph Hansell of FTI Consulting as joint and several deed administrators (**Deed Administrators**) of the following entities, to prepare a loss methodology to adjudicate on admitted creditor claims:

(a) SurfStitch Group Limited ACN 602 288 004 (Subject to Deed of Company Arrangement) (**SGL**) pursuant to the deed of company arrangement executed by SGL, the Administrators and Ezibuy Holdings Limited NZBN 9429033569444 (**Ezibuy**) dated 18 April 2018 (**SGL DOCA**); and

(b) Surfstitch Holdings Pty Limited ACN 601 114 603 (Subject to Deed of Company Arrangement) pursuant to the deed of company arrangement executed by SHPL, the Administrators, Ezibuy and its related entities Alceon Retail Bidco Pty Ltd ACN 625 288 324 and Alceon Retail Holdco Pty Ltd ACN 625 287 738 dated 18 April 2018 (**SHPL DOCA**).

5 Annexed to this affidavit and marked "**DW1**" is a copy of my report containing the Deed Administrators' proposed loss methodology to quantify the claims of admitted creditors under the SGL DOCA.

## Class actions and loss methodology

6 In preparing my report I have had regard to the 'Loss Methodology' and 'Amended Settlement Distribution Scheme' prepared by the representative plaintiffs (**Plaintiffs**) and their associated experts in two shareholder class actions which were commenced against SGL (**Class Actions**). The Loss Methodology and Amended Settlement Distribution Scheme was contained (albeit in redacted form) in exhibit CGM-21 to the affidavit of Glenn McGowan affirmed 30 March 2020.

7 I have also reviewed the reports previously prepared by Mr Greg Meredith of Ferrier Hodgson on behalf of the Plaintiffs in the Class Actions on 29 March 2018 and 22 August 2018, which I understand forms the basis of the Loss Methodology adopted in the Amended Settlement Distribution Scheme. These reports are contained in exhibit CGM-11 to the affidavit of Glenn McGowan affirmed 23 August 2018.

8 Finally, I have considered the Plaintiffs' Loss Methodology as set out in the 'Loss Calculations' prepared by Wynand Mullins of McGrathNicol dated 6 March 2020, and is contained in exhibit GCM-20 to the affidavit of Glenn McGowan affirmed 19 March 2020.

9 Based on my review of these materials and the preparation of my report, the differences in proposed approaches of the Deed Administrators and the Plaintiffs to shareholder loss quantification, include as follows:

(a) the method for matching the 'corrective disclosures' to the 'misleading disclosures' to determine the portion of the corrective disclosure that should be considered to be 'inflation' at the start of each loss period;

(b) the method for matching shares said to be purchased at an inflated price to the sale of those shares where those shares were sold at an inflated price (in order to 'net' losses with any offsetting gains (ie whether to adopt the 'first in, first out', 'last in, first out' or 'Simplified Netting' approach) as considered by Justice Brereton in *HIH Insurance (In Liq)* [2017] NSWSC 380);

(c) whether the loss period should begin on 27 August 2015 or 23 October 2015; and

(d) whether the methodology applied to the 'Retention Sub-Group' (relating to shares held at the beginning of the loss period) should be applied to all of those shares (even if sold during the relevant period), or only those still held at 9 June 2016.

10 I note that I previously engaged in without prejudice discussions with Wynand Mullins in an effort to reduce differences in our respective methodologies. The above are differences in approach which we were unable to agree.

11 The differences in approach may result in a different entitlement for admitted shareholder-creditors under the SGL DOCA compared to their entitlement under the Amended Settlement Distribution Scheme if they choose to participate in the Class Actions settlement.

**AFFIRMED** by **DAWNA WRIGHT** at Melbourne )
in the State of Victoria on 15 May 2020 )
before me: )

.............................................................................. )
Signature of authorised witness )

.................................................................... Signature of deponent

..............................................................................
Name of authorised witness

…………………………………………………

Address of authorised witness

Solicitor
………………………………………………….
Capacity in which authorised witness stakes the affidavit

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1 I saw the face of the deponent.

2 I have confirmed the person's identity using an identification document and the document I relied on was ………………………………………….……………………………….....

This is the document referred to as Annexure "DW1" in the affidavit of Dawna Kathleen Wright affirmed in Melbourne on 15 May 2020 before me Aden James Bates, Solicitor.

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# Surfstitch Group Limited and Surfstitch Holdings Pty Ltd

# Report of Dawna Wright

# 11 May 2020

| | | |
|---|---|---|
| Specialist Field | : | Forensic Accounting – calculating shareholder losses |
| Instructing Law Firm | : | King Wood Mallesons |
| On behalf of | : | Deed Administrators of Surfstitch Group Limited and Surfstitch Holdings Pty Limited |
| Subject of Report | : | Methodology for calculating shareholder losses |

# Table of Contents

# 1. GLOSSARY

| Term | Definition |
|---|---|
| Acquisition Sub-Group | Those who acquired shares in Surfstitch between 23 October 2015 and 9 June 2016 and retained shares on any of 25 February 2016, 3 May 2016 or 9 June 2016 |
| ARCC | Audit, Risk & Compliance Committee |
| DOCA | Deed of Company Arrangement |
| DOCA Distribution Formula | The Deed Administrators are required to develop a formula quantifying the amount that is required to be paid to each Group Member |
| EBITDA | Earnings before interest, tax, depreciation and amortisation |
| FIFO | First In First Out |
| FY | Financial Year |
| IPO | Initial Public Offering |
| LIFO | Last In First Out |
| Material EBITDA Information | An officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A15 million and $18 million |
| Material Revenue Information | An officer or officers of SRF had, or ought reasonably to have, come into possession of information that the 1HFY16 Financial Report had overstated SRF's revenue, gross profit and profit before tax by approximately $20.3 million |
| Material Revised EBITDA Information | An officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be significantly less than between $A2 million and A$3 million |
| McConnell Report | Mr Greg Meredith's opinions of the plaintiffs' losses for the purpose of a 'proof of debt' in relation to the McConnell proceeding dated 22 August 2018 |
| Mr Meredith | Mr Greg Meredith |
| Nakali Report | Mr Greg Meredith's opinions of the plaintiffs' losses for the purpose of a 'proof of debt' in relation to the Nakali proceeding dated 29 March 2018 |
| Period 1 | Period commencing on 27 August 2015 and concluding 24 February 2016 |
| Period 2 | Period commencing on 25 February 2016 and concluding 2 May 2016 |
| Period 3 | Period commencing on 3 May 2016 and concluding 8 June 2016 |
| Proceedings | Nakali and the McConnell Class Actions |
| Retention Sub-Group | Those who already held shares on 23 October 2015 and retained those shares on any of 25 February 2016, 3 May 2016 or 9 June 2016 |
| SDS | Settlement Distribution Scheme |
| SDS Distribution Formula | Schedule B of the SDS |
| SHPK | Surfstitch Holdings Pty Limited |

| Term | Definition |
|---|---|
| Surfstitch / SRF | Surfstitch Group Limited |
| True Value | The price at which the shares would have been sold after the first Corrective Disclosure |

# 2. SUMMARY OF OPINIONS

## 2.1 SUMMARY OF OPINION – DOCA DISTRIBUTION FORMULA

2.1.1. My opinion of the appropriate DOCA Distribution Formula is summarised in Table 1 below. I have summarised the loss calculation formula for each of the various share price inflation combinations in Table 1 in the matrix at Annexure I.

**Table 1.**

| | Retention Sub-Group | Acquisition Sub-Group (Period 1) | Acquisition Sub-Group (Period 2) | Acquisition Sub-Group (Period 3) |
|---|---|---|---|---|
| **Acquisition date range** | Pre-27-Aug 15 | 27-Aug-15 to 24-Feb-16 | 25-Feb-16 to 2-May-16 | 3-May-16 to 8-Jun-16 |
| **Date to which shares must be held** | 25 February 2016, 3 May 2016 or 9 June 2016 | 25 February 2016 | 3 May 2016 | 9 June 2016 |
| **Methodology** | Price at which would have sold (True Value) less actual sale price | Inflation at purchase less inflation at sale | Inflation at purchase less inflation at sale | Inflation at purchase less inflation at sale |
| **Relevant Share price** | $0.67[1] True Value | $1.066 Inflation | $0.681 Inflation | $0.177 Inflation |

2.1.2. The matching of sales to purchases is generally undertaken using alternate methodologies. In my experience, the three methodologies considered are LIFO, FIFO and sometimes 'netting'. Mr Meredith has adopted only a "simplified netting" approach. Based on our initial analysis, in my opinion, this could cause material differences in the outcomes across shareholders (see Annexure G).

2.1.3. I have considered the application of both the LIFO and FIFO methodologies in this report. I have adopted a LIFO methodology for the purposes of the loss calculations, which is consistent with the decision of *HIH Insurance (In Liq)* [2017] NSWSC 380.

## 2.2 BACKGROUND

2.2.1. I have been provided with the following background information:

(a) John Park and Joseph Hansell of FTI Consulting are the Deed Administrators of Surfstitch Group Limited (**Surfstitch**) and Surfstitch Holdings Pty Limited (**SHPK**). In April 2017, Surfstitch and SHPL each executed Deeds of Company Arrangement (**DOCAs**).

(b) On 13 March 2020, International Litigation Partners and Vannin Capital (the Funders) circulated a joint draft Settlement Distribution Scheme (**SDS**) for the Nakali and the McConnell Class Actions (**Proceedings**). Schedule B of the SDS sets out a formula (**SDS Distribution Formula**) quantifying how the cash and convertible notes brought into the Settlement Distribution Fund will be distributed to the registered Group Members.

(c) Mr Greg Meredith (**Mr Meredith**) has provided opinions of the plaintiffs' losses for the purpose of a 'proof of debt' in relation to the Nakali proceeding (**Nakali Report**, dated 29 March 2018) and the McConnell proceeding (**McConnell Report,** dated 22 August 2018). The SDS Distribution Formula adopts the methodologies set out in the Nakali Report and the McConnell Report.

(d) The Deed Administrators are required to develop a formula quantifying the amount that is required to be paid to each Group Member (**DOCA Distribution Formula**), irrespective of whether they have registered to

[1] If the Group Member still own the shares at 9 June, then the sale price is $0.32 which is the closing share price as at 9 June

receive a distribution under the SDS. The SDS and the DOCAs each provide the Deed Administrators with discretion on the DOCA Distribution Formula to be applied.

2.2.2. I understand this Memorandum will be used to assist the Deed Administrators in determining the DOCA Distribution Formula. I adopted the objective of deriving a reasonably robust and defensible methodology that does not prejudice one Group Member over another. I understand the DOCA Distribution Formula does not need to be consistent with the SDS Distribution Formula. I disagree with the methodology adopted in the SDS, and in my opinion the differences could result in materially different outcomes across certain shareholders. Therefore, the methodology set out in this Memorandum differs from the SDS. I have highlighted the areas of difference in this Memorandum.

2.2.3. In drafting this Memorandum, I have relied upon the materials provided to me (see **Annexure A**). I have also participated in a joint expert conclave with McGrathNicol, as described at Annexure B. My comments are based on the information contained in these documents and the discussions with McGrathNicol described in Annexure B.

## 2.3 DEFINITION OF GROUP MEMBERS

2.3.1. According to the Nakali Report[2], the Nakali Group Members include shareholders who purchased shares in the Company between:

(a) Period 1 - 27 August 2015 and 24 February 2016;

(b) Period 2 – 25 February 2016 and 2 May 2016; or

(c) Period 3 – 3 May 2016 and 8 June 2016; and

(d) were still holding those shares on 25 February 2016, 3 May 2016 or 9 June 2016 (the dates of the **Corrective Disclosures**).

2.3.2. According to the McConnell Report,[3] the McConnell Group Members have two sub-groups:

(a) **Acquisition Sub-Group:** those who acquired shares in Surfstitch between 23 October 2015 and 9 June 2016 and retained shares on any of 25 February 2016, 3 May 2016 or 9 June 2016; and

(b) **Retention Sub-Group**: those who already held shares on 23 October 2015 and retained those shares during the above periods relying on the forecasts and statements issued by Surfstitch.

2.3.3. I have assumed that the shares owned by an individual shareholder can be allocated across the two sub-groups (i.e., one shareholder could have certain parcels of shares in each sub-group, but not double-counted in both). Accordingly, the first step is to assess whether each share parcel of each shareholder relates to the Acquisition Sub-Group or the Retention Sub-Group (using FIFO / LIFO).

## 2.4 METHODOLOGY

2.4.1. Where there is a claim of share price inflation, in my experience the counterfactual scenario is generally that the shareholder would have bought the same number of shares, but at a lower price. In my experience, the losses in a shareholder class action are generally calculated as the inflation in the share price when each share was purchased, less the inflation in the share price when that share was sold (as this represents an offsetting gain). This counterfactual scenario applies to, and is adopted by, the Nakali group members and the McConnell 'Acquisition Sub-Group' members, and I will refer to it as the **Acquisition Methodology**. The Retention Sub-Group relies on a different counterfactual scenario, which I discuss further at paragraph 2.4.11 below.

### Start date of the loss period

2.4.2. As per Section 2.3 above, the Nakali and McConnell Proceedings adopt different start dates of the loss period. In order to adopt a methodology that is consistent across the Nakali and McConnell Group Members (and therefore avoids prejudicing one group of shareholders over another), I have considered whether it is appropriate to adopt the same loss period start date across both Proceedings. In my opinion, it is appropriate to start the loss period at

[2] Paragraph 7 of the Nakali Report
[3] Paragraph 1.1.3 of the McConnell Report

27 August 2015 for both the Nakali and the McConnell Proceedings (and for both the Acquisition Sub-Group and the Retention Sub-Group). I set out the reason for my opinion at Annexure C of this Memorandum.

### Acquisition Methodology

2.4.3. As per above, the losses in a shareholder class action are generally calculated as the inflation in the share price when the share was purchased, offset by the inflation in the share price when the share was sold (as this represents an offsetting gain), multiplied by the number of shares. In my opinion, it would be appropriate to adopt the methodology summarised below.

2.4.4. **Step 1 – determine the inflation in the share price (caused by the misleading disclosure) at each date in the relevant period**:

(a) The inflation in the share price caused by the misleading disclosure is typically assessed with reference to the decline in the price at the date that the misleading disclosure is corrected (the Corrective Disclosures). Where there are multiple corrections, in our opinion the corrections must be matched to the original misleading disclosure to attribute the appropriate quantum of correction to share price to the inflation value caused by the misleading disclosure.

(b) I agree with the calculation of the 'share price response' as per the Nakali and McConnell Reports, being the share price decline at the dates of the Corrective Disclosures.

(c) However, in our opinion, the Nakali and McConnell Reports do not correctly match the Corrective Disclosures to the original misleading disclosure to calculate the share price inflation that relates to each Loss Period.

(i) McGrathNicol agree that matching the Corrective Disclosures to the original misleading disclosure is a step that should be undertaken. However, McGrathNicol are of the view that it is not possible, with the information available, to assess whether one disclosure event and its corresponding share price inflation relate to more than one period.

(ii) FTI Consulting disagrees that it is not possible. FTI Consulting economists have undertaken further analysis of the allegedly misstated and corrected information over the Loss Periods in order to more correctly attribute each of the Corrective Disclosures to the original misleading disclosures. Our economist's analysis is described in Annexure D and Annexure F.

(d) I summarise our opinion of the more correct share price inflation attributable to each Loss Period in Table 2 below, compared with the opinion of Mr Meredith:

**Table 2.**

| | Period 1 | Period 2 | Period 3 |
|---|---|---|---|
| **Date period** | 27 August 2015[4] to 24 February 2016 | 25 February 2016 to 2 May 2016 | 3 May 2016 to 8 June 2016 |
| **Share price response** | $0.562 | $0.504 | $0.177 |
| **Attribution** (see paragraph 2.5.1 below) | 100% | 100% | 100% |
| **Share Price Inflation (per share)** | $1.066[5] | $0.681[6] | $0.177[7] |
| *Meredith inflation (at 100% attribution)* | *$0.562* | *$0.504* | *$0.177* |

2.4.5. I further discuss the differences of opinion and the reasons for my opinion at Annexure D.

2.4.6. **Step 2** – **match the share sales to the purchases**:

[4] Being the start date of the first misleading event
[5] Meredith share price inflation for Periods 1 and 2
[6] Meredith share price inflation for Periods 2 and 3
[7] Meredith share price inflation for Period 3

(a) The matching of sales to purchases is generally undertaken using alternate methodologies (because there has not been any definitive Judgment on this issue). In my experience, the three methodologies considered are LIFO, FIFO and sometimes 'netting'.

(b) Mr Meredith has adopted only a "simplified netting" approach. In my opinion, this could cause material differences in the outcomes across shareholders. Accordingly, I have considered both FIFO and LIFO methodologies for matching the sales to the respective purchases.

(c) I understand that the issue of matching sales to purchases was mentioned in the decision of HIH Insurance (In Liq) [2017] NSWSC 380. In that case, his Honour determined that LIFO should be adopted. I have adopted the LIFO methodology for my calculations.

2.4.7. I further discuss the differences of opinion and the reasons for my opinion at Annexure E.

2.4.8. **Step 3 – calculate the 'net' inflation on each parcel of shares - i.e., inflation on purchase less inflation on sale**:

(a) I have multiplied the number of shares in each parcel calculated in Step 2 by the net share price inflation, being the share price inflation on the date of purchase less the share price inflation on the date of sale (calculated in Step 1).

2.4.9. Based on the above, put simply, to calculate the loss on each share purchased, the share price inflation summarised in Table 2 would be applied on each of the buy and sell date. For each share, the loss is equal to the share price inflation at the time of purchase less the share price inflation at the time of sale.

2.4.10. I set out an example of the above in Annexure E.

### Retention Methodology

2.4.11. The loss claimed in relation to the Retention Sub-Group is that Group Members would have disposed of their Pre-period Shares before the November Contravening Conduct. The counterfactual scenario is that if Surfstitch had fully informed the market of the October Information, the Plaintiff would have disposed of most of its Pre-period Shares "within a short time after 23 October and in any event before 10 November 2015[8]", and not acquired any further shares. The McConnell Report describes the loss on shares held at 23 October 2015 and retained to 9 June 2016 as:

(a) The "True Value"[9] of each share (representing the price at which the shares would have been sold after the first corrective disclosure).

(b) The above losses are then offset / reduced by the following:

(i) any "windfall gains"[10] made by the shareholder on other shares sold during the period of inflation (calculated as the share price inflation on the shares sold); and

(ii) the actual price (proceeds realised) to the extent the shares at point a) were sold (post 9 June 2016).

2.4.12. The reasoning for adopting the above "True Value" methodology is not discussed in the McConnell Report. However, I believe it to be based on the counterfactual scenario that a corrective disclosure would have been made on 23 October 2015, triggering a corrective 'share price response'. The shares would have been sold shortly thereafter, at their corrected "True Value" at that date (actual share price less inflation), rather than held and suffering a further subsequent decline. Therefore, the loss calculated in the McConnell Report can be described as the price at which the shareholder would have sold, less the price at which they did sell post 9 June 2016, offset by any gains on sales of other shares during the period. However, this methodology appears to have been applied only to those shares held to 9 June 2016, and not to those sold prior to that date (as they are treated differently in the calculation described above).

2.4.13. Assuming that it has been determined that the Retention Sub-Group claim is valid, in my opinion the loss should be calculated as the difference between the price at which the shareholder would have sold (the True Value) and the price at which they did sell. Accordingly, there are two aspects of the McConnell Report with which I disagree.

[8] McConnell Report paragraph 1.3.1
[9] McConnell Report paragraph 1.3.3
[10] McConnell Report paragraph 1.3.4

2.4.14. First, in relation to the shares retained to 9 June 2016, the McConnell Report and the SDS methodology deduct the price when the share was ultimately sold (at any date post 9 June 2016). I disagree with this approach. In my view, the correct deduction would be the value at 9 June 2016, being the end of the loss period and the date at which all corrective disclosures had been made. As at that date, the shareholder could have sold the shares for $0.32 being the closing share price on 9 June 2016 after all corrective disclosures had been made. Whether the shareholder chose to do so, or to sell at a later date should not affect the loss calculation. For the purposes of this calculation, I have adopted the 9 June 2016 closing price of $0.32, rather than the post-9 June 2016 sale price.[11]

2.4.15. Second, I disagree with the methodology applied to the shares sold prior to 9 June 2016. In my opinion the methodology to calculate loss on the Retention Sub-Group shares 'retained' until each of the Corrective Disclosures should be the same as those retained until 9 June 2016.

2.4.16. Accordingly, in my opinion the losses in relation to all of the Retention Sub-Group shares should be calculated as:

(a) The "True Value"[12] of each share (representing the price at which the shares would have been sold after the first corrective disclosure);

(b) Less: the actual proceeds realised (i.e. the share price) when the share was sold.

2.4.17. The McConnell Report states that the claim "in respect of shares retained is not a conventional approach for claims made in the context of a securities class action." However, if it is determined that the Retention Sub-Group represents a valid legal claim, then in my opinion the above approach is a reasonable methodology for the quantification of loss in relation to the claim. I describe the steps to apply this methodology in paragraph 1.4.19 below.

2.4.18. The McConnell Report only relates to the 23 October 2015 disclosure (as the start of the relevant period), and not to the 27 August 2015 disclosure. In order to be consistent with the Nakali proceeding, I have considered the relevant start date to be 27 August 2015 (see paragraph 2.4.2). Accordingly, for the purpose of this analysis I have assumed that the relevant counterfactual scenario for the Retention Sub-Group is that, had Surfstitch not engaged in misleading conduct on 27 August 2015, the Group Member would have disposed of most or all of its shares purchased in Surfstitch "within a short time after" 27 August 2015.

2.4.19. Based on the above, to calculate the loss for the Retention Sub-Group, I have adopted the methodology described above, but with an adjustment for the earlier start date:

(a) The number of shares held on 27 August 2015; *multiplied by*

(b) Price at which the shares would have been sold, or "True Value" per share "within a short time after" 27 August 2015.

(c) *Less:* the price at which the shares were sold, to the extent shares were sold between 27 August 2015 and 8 June 2016 (excluding any gains); or

(d) To the extent shares were held at 9 June 2016, the price the shareholder could have sold their shares as at 9 June 2016, being $0.32 (the closing price as at 9 June 2016).

2.4.20. **Step 1** - **calculate the number of shares held on 27 August 2015**:

(a) For the purpose of my analysis, I have adopted the LIFO methodology of matching sales to the opening balance at 27 August 2015. I discuss this difference further in Annexure E.

2.4.21. **Step 2 – identify the period during which the shares would have been sold:**

(a) The McConnell Report sets out the calculation of the True Value per share as the average share price of Surfstitch between 23 October 2015 and 9 November 2015 of approximately $1.73, less the share price inflation for Loss Period 1.

[11] Arguably, the same "short time after" window could be applied as that used to calculate the True Value – see paragraphs 1.4.18 and 1.4.23.
[12] McConnell Report paragraph 1.3.3

(b) As discussed in paragraph 1.3.2, it is my opinion that the loss period should begin on 27 August 2015. Therefore, I have calculated the True Value per share based on the average share price of Surfstitch immediately succeeding 27 August 2015. The period 23 October to 9 November 2015 inclusive (used by Mr Meredith) consists of 12 trading days. On this basis I have adopted the same 12-day period, being to 11 September 2015. The average share price for the period from 27 August 2015 to 11 September 2015 was approximately $1.74.

2.4.22. **Step 3 - calculate the "True Value" – i.e., the value at which the shares would have been sold:**

2.4.23. I have adopted the methodology set out in the McConnell Report:

(a) The average 'actual' share price of Surfstitch between 27 August 2015[13] and 11 September 2015[14] traded on the ASX of approximately $1.74 per share; *less*

(b) The share price inflation applicable during that period (Loss Period 1) of $1.066;

(c) Being $0.67 per share ($1.74 less $1.066).

2.4.24. I set out an example of the Retention Methodology calculation in Annexure E.

## 2.5 OTHER ISSUES CONSIDERED

### Attribution percentages

2.5.1. The Nakali and McConnell Reports include an "attribution percentage" in allocating the Corrective Disclosure share price movement to the inflation attributable to the original misleading disclosure (see Annexure B). I agree that, in principle, this is an issue that should be considered. I have not adopted Mr Meredith's attribution percentages, as they seem to be arbitrarily selected. However, the attribution requires a detailed analysis to arrive at the appropriate percentage to use. In the absence of the appropriate analysis, and due to it not being material to proportionality across the shareholders, I have adopted 100% attribution rather than an arbitrary percentage.

### Illiquidity discount

2.5.2. The McConnell Report states at paragraph 1.3.9 "*In estimating loss for the Retention Sub-Group, if there is a large number of shares to be sold between 23 October 2015 and 9 November 2015 this would require consideration of whether an illiquidity/blockage discount should be applied to the average share price*." Accordingly, I have considered whether an illiquidity discount should be applied.

(a) The methodology adopted (by both Mr Meredith and I) relies on the actual price movements on the dates of the actual Corrective Disclosures.

(b) As shown in the table below, the share price movements on those dates already take into account large volumes sold on those days. I set out in the table below the daily trading volumes for the three trading days leading up to each Corrective Disclosure. The highlighted days are the days Mr Meredith included in his event window for each of the Corrective Disclosures:

[13] Being the start date of the first misleading event

[14] Being the end of the period within which they would have sold the shares

**Table 3.**

| | Daily Volume |
|---|---|
| | |
| 22/02/2016 | 182,824 |
| 23/02/2016 | 135,597 |
| 24/02/2016 | 116,663 |
| **25/02/2016** | **7,052,522** |
| **26/02/2016** | **5,957,261** |
| **29/02/2016** | **2,720,089** |
| **1/03/2016** | **1,111,341** |
| | |
| 28/04/2016 | 306,916 |
| 29/04/2016 | 444,765 |
| 2/05/2016 | 349,504 |
| **3/05/2016** | **35,208,470** |
| **4/05/2016** | **9,733,942** |
| | |
| 6/06/2016 | 1,031,372 |
| 7/06/2016 | no trading |
| 8/06/2016 | no trading |
| **9/06/2016** | **22,006,020** |

(c) Based on the above, it is my opinion that the volumes about would result in downward pressure on the price due to high levels of selling. Therefore, my methodology for quantifying inflation already reflects the appropriate share price correction (including the impact of illiquidity).

2.5.3. For the reasons set out above, in my opinion is not appropriate to apply any liquidity discount.

2.5.4. Each of the above issues is discussed in further detail in the attached annexures.

Signature ..................................................

Dawna Wright

Senior Managing Director

11 May 2020

# 3. LIST OF ANNEXURES

| Annexure | Description |
|---|---|
| Annexure A | List of documents relied upon |
| Annexure B | Summary of joint expert conclave process with McGrathNicol |
| Annexure C | Start date of the loss period - 27 August 2015 or 23 October 2015 |
| Annexure D | Matching the Corrective Disclosure to the original misleading disclosure |
| Annexure E | Matching share sales to the purchase of those shares – FIFO/LIFO |
| Annexure F | Memorandum from Economist of FTI Consulting - matching the 'corrective disclosure' to the original misleading disclosure |
| Annexure G | LIFO and FIFO Scenario Analysis from Economist of FTI Consulting |
| Annexure H | Letter from Dawna Wright of FTI Consulting to King Wood Mallesons dated 12 November 2019 |
| Annexure I | Loss Calculation Matrix |

# ANNEXURE A

# ANNEXURE A – DOCUMENT LIST

I have relied on the following documents in drafting this Memorandum:

| Document name |
| --- |
| Surfstitch Group – ASX Announcement – 27 August 2015 |
| Surfstitch Group – shareholder registry and trading records |
| Board papers from November 2014 to August 2017 |
| Audit, Risk & Compliance Committee documents from November 2014 to August 2017 |
| Finance workpapers for the period from July 2015 to January 2016 |
| Nakali Report of Mr Greg Meredith dated 29 March 2018 |
| McConnell Report of Mr Greg Meredith dated 22 August 2018 |
| Mr Meredith's volume analysis contained in Annexures SI and SJ of the Nakali Report (Microsoft Excel format) |
| Joint draft Settlement Distribution Scheme for the Nakali and the McConnell Class Actions |
| Statement of Claim dated 22 May 2017 |
| Broker reports of: J.P Morgan dated 25 February 2016 and Morgan Stanley dated 25 February 2016 |

# ANNEXURE B

# ANNEXURE B – JOINT EXPERT CONCLAVE PROCESS

### Review of Meredith Reports and conferences with Mr Mullins

I was instructed by King Wood Mallesons (on behalf of the Deed Administrators) to confer with Mr Meredith in relation to the quantification of losses for each Group Member. In preparation for the conference, I was instructed to review the Meredith Reports and to draft a list of issues for discussion (including identifying any areas of agreement and disagreement). In a letter dated 12 November 2019, I provided King Wood Mallesons with a list of issues for discussion (see Annexure H).[15]

I was informed on 13 November 2019 that due to a conflict, Mr Meredith was unable to accept the engagement. Accordingly, I was asked to confer with Mr Mullins of McGrathNicol. Mr Mullins indicated that he worked directly with Mr Meredith at Ferrier Hodgson and assisted him in preparing the Meredith Reports. In this capacity, Mr Mullins agreed with the opinions expressed by Mr Meredith in the Meredith Reports.

On 19 November 2019, I conferred with Mr Mullins, seeking to agree on an appropriate loss methodology to apply to each Group Member in the Class Action Proceedings. We were subsequently advised by Mr Mullins that he was instructed to cease communications with FTI Consulting. Accordingly, no 'joint report' has been produced.

There were four substantial areas of disagreement arising from the conclave. These are described below:

1. The correct 'event study window' to apply in order to measure the impact of the 'corrective disclosure';
2. The method for matching the 'corrective disclosure' to the original misleading disclosure to determine the portion of the corrective disclosure that should be considered to be 'inflation' at the start of the (or each) period;
3. The method for matching shares purchased at an inflated price to the sale of those shares sold at an inflated price in order to 'net' losses with any offsetting gains (FIFO, LIFO or 'Simplified Netting'); and
4. Whether the loss period should begin on 27 August 2015 or 23 October 2015.

Each of these are discussed in turn below.

### Event study window

FTI Consulting undertook an Event Study analysis based on a market model of the Surfstitch daily log returns run on the daily log returns of the ASX All Ordinaries Index (AS30) from 25 February 2015 to 24 February 2016 ("estimation window"). Based on our analysis, we raised a query with McGrathNicol in relation to the event window that was adopted by Mr Meredith in relation to Period 1 and Period 3.

However, Mr Mullins was able to provide detailed analysis supporting their calculations of the estimated event window. The discrepancies in our calculations stemmed from an alternative index being used by McGrathNicol, rather than a different methodology. In the interest of narrowing the issues, we agreed with their selected 'event window'. I summarise the 'agreed' event window in the table below:

**Table 4.**

| | Period 1 | Period 2 | Period 3 |
|---|---|---|---|
| **Event window days** | 4 days (24/2/16 – 1/3/16) | 2 days (2/5/16 – 4/5/16) | 5 days (8/6/16 – 16/6/16) |

### Share price response

We calculated the share price response amount based on our Event Study analysis described in paragraph 0. Our calculation of the share price response amounts differed to Mr Meredith's calculations due to the discrepancy in the event window days. Using Mr Meredith's event window days above (Table 4), we agree with his calculation of the share price response amount shown in Table 5 below:

[15] In relation to the approach undertaken by Mr Meredith

**Table 5.**

| | Period 1 | Period 2 | Period 3 |
|---|---|---|---|
| **Share price response amount** | $0.562 | $0.504 | $0.177 |

### Matching the corrective disclosure to the original misleading disclosure

Mr Mullins and I had an initial discussion about the issue of matching each of the 'corrective disclosures' to the original misleading disclosure. However, I was then informed by Mr Mullins that McGrathNicol were instructed to terminate the conclave. I therefore cannot consider this issue resolved. I requested McGrathNicol to summarise their view on this issue. The initial McGrathNicol response was simply that the calculation *"implicitly assumes that each share price inflation is a result of each market disclosure pleaded."*

My understanding of the McGrathNicol position based on our initial discussion and on their response is as follows (in relation to the Nakali proceeding):

(a) On 27 August 2015 the company announced its FY16 guidance, being EBITDA of $15 million to $18 million.

(b) On 23 October 2015 the company affirmed its FY16 EBITDA guidance, but McGrathNicol do not consider this date in their analysis.

(c) On 25 February 2016 the company released its 1H16 financial results and retracted its FY16 guidance.

(i) McGrathNicol consider this disclosure was a 'corrective disclosure', that <u>fully</u> corrected the 27 August 2015 misleading disclosure. Therefore, the full resulting decrease in share price is considered to be inflation from 27 August 2015 to 24 February 2016.

(ii) However, this disclosure is also considered to be a 'misleading disclosure' for the next period.

(d) On 3 May 2016, the company provided a revised FY16 EBITDA guidance of $2 to $3 million.

(i) McGrathNicol consider this disclosure was a 'corrective disclosure', that <u>fully</u> corrected the 25 February 2016 misleading disclosure (being the retraction of the FY16 guidance). Therefore, the full resulting decrease in share price is considered to be inflation from 25 February 2016 to 2 May 2016.

(ii) However, this disclosure is also considered to be a 'misleading disclosure' for the next period.

(e) On 9 June 2016, the company disclosed a 'reversal' of $20.3 million in the 1H16 results and a revised FY16 guidance of between negative $17.3 million and negative $18.3 million.

(i) McGrathNicol consider this disclosure was a 'corrective disclosure', that <u>fully</u> corrected the 3 May 2016 misleading disclosure (being the revised FY16 guidance of $2-$3 million). Therefore, the full resulting decrease in share price is considered to be inflation from 3 May 2016 to 8 June 2016.

The questions that I asked McGrathNicol related to the following McGrathNicol views that I consider may not be reasonable (in the absence of further detailed analysis):

(a) The view that the same disclosure can be considered both 'fully corrective' and 'misleading' at the same time;

(b) The view that the 3 May 2016 and 9 June 2019 disclosures do not relate at all to correcting the original FY16 EBITDA guidance given on 27 August 2015;

(c) The view that the 9 June 2016 disclosure announcing a reversal of the 1H16 results is not considered to be a correction of the 25 February 2016 disclosure that announced the 1H16 financial results; and

(d) The view that the effect on the share price of the 9 June 2016 announcement of the FY16 guidance (with only 3 weeks left in the financial year) should all be considered corrective of the 3 May 2016 guidance (with 8 weeks remaining in the financial year).

If more than one of the 'corrective disclosures' are considered to be correcting the 27 August 2015 guidance, then the inflation attributed to the first period would increase (from the value attributed by McGrathNicol). If the 9 June 2016 disclosure is considered to at least partly be correcting the original disclosure of the 1H16 results on 25

February 2016, then the inflation should be attributed to the second period. Price inflation would need to be calculated by reference to all 3 correcting disclosures rather than only the first.

The proportionality of losses allocated across group members may be affected by this issue, as the loss will be understated (relative to other group members) for those group members who have held their shares from Period 1 through to Period 3. For example, if my concerns were considered, and a greater portion of the inflation was attributed to the first two periods, then a Group Member who purchased most of their shares in the first period would have a higher proportionate loss under this adjusted calculation. Likewise, a Group Member who purchased most of their shares in the third period would have a lower proportionate loss under this adjusted method. The differences would likely be material to at least some Group Members.

McGrathNicol's response to the above concerns was that *"it may be possible that one disclosure event and its corresponding share price inflation relate to more than one period. However, based on the information available, it was and is not possible to assess this possibility conclusively."*

I disagree that it is not possible to assess. It is possible to assess, or certainly to undertake further analysis to address what I consider to be internal inconsistencies and illogical assumptions. FTI Consulting have undertaken further analysis in respect of this issue, which is set out at Annexure D.

### Matching shares purchased at an inflated price to the sale of those shares sold at an inflated price

The calculations in the Meredith Report were undertaken on only a "simplified netting" basis. This methodology only considers all shares purchased during the period less the effect of all shares sold during the period. It does not consider whether some of the shares sold during the period may have been purchased prior to the start of the period (i.e. represents an opening balance at the start of the period), and therefore does not meet the definition of the applicable shares.

I discussed the method for matching shares purchased at an inflated price to the sale of those shares sold at an inflated price in order to 'net' losses with any offsetting gains (FIFO, LIFO or 'Simplified Netting') with Mr Mullins. This was an area of disagreement. In my experience (both in Australia and in the US), 'loss per share' calculations are usually undertaken on two or three methods (FIFO and LIFO, and sometimes netting), because I am not aware of the most appropriate method employed by any Court (and in any event, it may need to be considered separately for each matter).

McGrathNicol has referred to the "HIH decision" as 'confirmation' that netting is the appropriate method. His Honour held that sales must be considered for the purpose of quantifying a plaintiff's true loss (netting). However, it is my understanding that in a subsequent decision pursuant to submissions, his Honour considered the LIFO approach to be more appropriate in the circumstances than the FIFO approach or proportionate approach (treating sold shares as being drawn from the pools of pre-period and inflated period shares proportionately). Therefore, I interpret his Honour's decision to mean that offsetting gains should be considered (which all three methods do), but not to mean that the 'simplified netting' methodology would be preferred over the more precise matching with LIFO or FIFO.

Mr Mullins and I had an initial discussion about this issue (reflected above). However, I was then informed by Mr Mullins that McGrathNicol were instructed to terminate the conclave. I therefore cannot consider this issue resolved. The choice of methodology between Simplified netting, FIFO or LIFO calculations can produce materially different results from one shareholder to another (see Annexure G). In our view, alternate methodologies should be considered in order to assess whether any shareholder is materially prejudiced from the adoption of one method over another. This may also impact whether a Group Member is in the Retention Sub-Group.

FTI Consulting have undertaken further analysis in respect of this issue, which is set out at Annexure E.

### Whether the loss period should begin on 27 August 2015 or 23 October 2015

The issue of whether the start of the loss period should be 27 August 2015 or 23 October 2015 was raised in my first discussion with Mr Mullins. However, we did not resolve this issue before the conclave was terminated by McGrathNicol. I consider this issue at Annexure C.

### Attribution percentages

In his McConnell Report, Mr Meredith states the following:[16]

(a) *"The share price response measures the total difference between the movement that would be expected in the Company's share price and the actual movement following the release of information to the market.*

(b) *In many cases the information released by the Company relates to multiple issues. Relevantly, the information released to the market can be classified into two types:*

  (i) *Old Bad News: information that either should have been disclosed to the market at an earlier time or corrects a misrepresentation made by the Company. The share price response to old bad news is referred to as the share price inflation; and*

  (ii) *New Bad News: information released by the Company that it is not alleged should have been made at an earlier time or does not correct an earlier misstatement. New Bad News is information which is outside the scope of the claims made by the plaintiffs. Accordingly, while there is a share price response to new bad news, this component is not considered part of share price inflation."*

In his McConnell Report, Mr Meredith calculates an attribution percentage for each of the three Loss Periods based on his analysis of Old Bad News and New Bad News:

**Table 6.**

| | Period 1 | Period 2 | Period 3 |
|---|---|---|---|
| **Attribution percentages** | 85% | 95% | 95% |

The Nakali and McConnell Reports include the "attribution percentage" in allocating the Corrective Disclosure share price movement to the inflation attributable to the original misleading disclosure. I agree that, in principle, this is an issue that should be considered. I have not adopted Mr Meredith's attribution percentages, as they seem to be arbitrarily selected. Mr Mullins agreed that it was arbitrarily selected. However, the attribution requires a detailed analysis to arrive at the appropriate percentage to use. In the absence of the appropriate analysis, and due to it not being material to proportionality across the shareholders, I have adopted 100% attribution rather than an arbitrary percentage.

[16] Paragraph 1.2.14 to 1.2.18 of the McConnell Report

# ANNEXURE C

# ANNEXURE C – START DATE OF THE LOSS PERIOD - 27 AUGUST 2015 OR 23 OCTOBER 2015

There is an inconsistency between the two pleadings. The McConnell Proceeding defines a start date of the loss period as 23 October 2015, while the Nakali Proceeding defines a start date of the loss period as 27 August 2015.

The issue of whether the start of the loss period should be 27 August 2015 or 23 October 2015 was raised in my first discussion with Mr Mullins. However, we did not resolve this issue before the conclave was terminated by McGrathNicol. The McConnell Report, and therefore the SDS Distribution Formula, adopts 23 October 2015 as the start of the loss period. Accordingly, the McConnell Acquisition Sub-Group calculation ignores shares purchased before 23 October 2015. It otherwise adopts the same methodology as the Nakali methodology.

A different methodology was adopted for the McConnell Retention Sub-Group. The McConnell Report states that the methodology adopted *"is not a conventional approach for claims made in the context of a securities class action".*[17] In the following paragraphs, I consider whether, if the 23 October 2015 disclosures are consider to be misleading, then the 27 August 2015 disclosure would also be considered to be misleading.

I have been provided with Audit, Risk & Compliance Committee (**ARCC**) and Board packs from November 2014 to August 2017, and finance workpapers for the months from July 2015 to January 2016. Based on my review of the ARCC and Board papers, and available underlying financial information, it is my opinion that there is insufficient support for the FY16 Guidance issued on 27 August 2015 in the documents prepared prior to that date as:

(a) Neither the ARCC nor Board meetings include any discussion or specific reference to the FY16 Guidance, and none of the tabled documents include any forward-looking financial information;

(b) I have not identified any actual EBITDA forecast prepared by the company in the documents available; and

(c) The available year-to-date actual historical financial information does not support the assertions made.

For the reasons set out above, it is my opinion that if there was inflation in the share price at 23 October 2015, then there was also inflation on 27 August 2015. Therefore, I have considered a Group Member to be those who already held shares on 27 August 2015 and retained those shares at the Corrective Disclosure dates.

The SDS Distribution Formula uses a start date of 23 October 2015, which is the date pleaded in the McConnell Proceeding. However, it is my opinion that, in order to maintain consistency across the groups (and not prejudice one group of shareholders over another) the first misleading conduct event for both Proceedings should be considered to have occurred on 27 August 2015, in line with the pleadings in the Nakali proceeding.

[17] Paragraph 1.3.2 of the McConnell Report

# ANNEXURE D

# ANNEXURE D - MATCHING THE 'CORRECTIVE DISCLOSURE' TO THE ORIGINAL MISLEADING DISCLOSURE

Mr Mullins and I had an initial discussion about the issue of matching each of the 'corrective disclosures' to the original misleading disclosure. However, I was then informed by Mr Mullins that McGrathNicol were instructed to terminate the conclave. I therefore cannot consider this issue resolved.

I raised several concerns with the approach adopted by McGrathNicol, as set out in Annexure B. McGrathNicol's response to the concerns was that *"it may be possible that one disclosure event and its corresponding share price inflation relate to more than one period. However, based on the information available, it was and is not possible to assess this possibility conclusively."*

I disagree that it is not possible to assess. It is possible to assess, or certainly to undertake further analysis to address what I consider to be internal inconsistencies and illogical assumptions. This annexure describes the further analysis undertaken by FTI Consulting.

McGrathNicol's response to the above concerns was that *"it may be possible that one disclosure event and its corresponding share price inflation relate to more than one period. However, based on the information available, it was and is not possible to assess this possibility conclusively."*

I have relied on the share price response amounts calculated by Mr Meredith. Because the share price response when the information is ultimately corrected is used to assess the quantum of inflation in the share price caused by the original misleading disclosure, the corrections must be assessed to consider which misinformation they are correcting, and whether multiple corrections were required to fully correct any particular misleading disclosure. The following analysis looks at the allegedly misstated and corrected information over the Loss Periods to match each Corrective Disclosure to the original misleading disclosure.

### *Material EBITDA information*

The Statement of Claim describes the "Material EBITDA Information" as follows:

(a) *"During the period commencing on 27 August 2015 and concluding 2 May 2016* ***(the First Relevant Period),*** *an officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A15 million and $18 million* ***(Material EBITDA Information).****"*[18]

On 27 August 2015, Surfstitch announced its 2015 full year results and stated that it expected FY2016 EBITDA in the range from A$15 million to A$18 million, which is growth of over 100% from FY2015. It also stated that it expected the second half of FY2016 to have stronger EBITDA results than the first half.[19]

The Material EBITDA Information was corrected in two partial corrective disclosures:

(a) On 25 February 2016, Surfstitch announced 1HFY16 results. In this announcement, the Surfstitch did not confirm its FY2016 EBITDA guidance. It stated "*Strong double-digit revenue growth is expected to continue with strong gross profit margins. SurfStitch Group will pursue demonstrated opportunities around accelerated content investment. Given the pace of change and long-term opportunities presented to the business, Management and the Board believe it is no longer prudent to focus on a defined EBITDA range. Instead, EBITDA growth will be flexed based on investment around the Global content strategy."*[20]

(b) The price declined on this announcement and market analysts noted that *"[r]emoval of guidance spooked the market*"[21] and that the *"change in guidance raised concerns."*[22] However, this announcement is a *partial* corrective disclosure, not a full corrective disclosure, because it did not disclose the Material EBITDA Information, as defined by the Statement of Claim that *"EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A15 million and $18 million."* In fact,

[18] Statement of Claim, paragraph 69, emphasis in original.
[19] SurfStitch ASX announcement, 27 August 2015.
[20] SurfStitch ASX announcement, 25 February 2016.
[21] J.P.Morgan, 25 February 2016.
[22] Morgan Stanley, 25 February 2016.

upon the Surfstitch withdrawing its previous guidance, analysts did not adjust their EBITDA estimates by much. J.P. Morgan stated *"we believe SRF will still reach the guidance range nonetheless"* and included in their model a FY2016 EBITDA estimate of A$19 million.[23] Morgan Stanley included in their model a FY2016 EBITDA estimate of A$21 million.[24] Bell Potter reduced their FY2016 EBITDA estimate by only 12.6%, to A$19.2 million.

(c) On 3 May 2016, Surfstitch announced revised FY2016 EBITDA guidance in a range of $A2 million to $A3 million.[25] This range can be considered to be "significantly less than between $A15 million and $18 million," and therefore to be the final corrective disclosure related to the Material EBITDA Information.

Based on these two partial corrective disclosures, alleged inflation due to the Material EBITDA Information over the period from 27 August 2015 through 2 May 2016 (or, the First Relevant Period) is as follows:

(a) **27 August 2015 – 24 February 2016:** alleged inflation = $0.562 (Period 1 correction) + $0.504 (Period 2 correction), or **$1.066**

(b) **25 February 2016 – 2 May 2016:** alleged inflation = **$0.504** (Period 2)

*Material Revenue Information and Material Revised EBITDA Information*

The Statement of Claim describes the "Material Revenue Information" as follows:

(a) "During the period commencing on 25 February 2015 and concluding 8 June 2016 **(the Second Relevant Period),** an officer or officers of SRF had, or ought reasonably to have, come into possession of information that the 1HFY16 Financial Report had overstated SRF's revenue, gross profit and profit before tax by approximately $20.3 million **(Material Revenue Information).**"[26]

As discussed above, on 25 February 2016, Surfstitch announced 1HFY16 results, including revenue of A$144.9 million, gross profit of A$69.9 million, and profit before tax of A$8.1 million.[27] While this was partially corrective to the Material EBITDA Information, it was also a misstatement of the Material Revenue Information.

The Statement of Claim describes the "Material Revised EBITDA Information" as follows:

(a) *"During the period commencing on 3 May 2016 and concluding 8 June 2016 **(the Third Relevant Period),** an officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A2 million and A$3 million **(Material Revised EBITDA Information).**"*[28]

As discussed above, on 3 May 2016, Surfstitch announced revised EBITDA guidance in a range of $A2 million to $A3 million. While this announcement is corrective to the Material EBITDA Information, it also is an additional misstatement of the Material Revised EBITDA Information.

On 9 June 2016, the Company's final corrective disclosure announced that $20.3 million of 1HFY 2016 revenue would be reversed and that, as a result, FY2016 EBITDA would likely be a loss of $17.3 million to $18.3 million.[29]

The 9 June 2016 announcement was corrective to both the Material Revenue Information and the Material Revised EBITDA Information. Since the EBITDA guidance in the announcement was a result of the revenue reversal, the two types of information are directly related and there is no way to attempt to parse the price movement at the time of the disclosure into portions attributable to each of the two types of information. Therefore, we attribute the full amount of associated price inflation ($0.177) starting at the earliest date of the two misstatements, 25 February 2016.

Based on this, the alleged inflation due to the Material Revenue Information and the Material Revised EBITDA Information was **$0.177** over the period from **25 February 2016 through 8 June 2016.** To calculate the daily

[23] J.P.Morgan, 25 February 2016.
[24] Morgan Stanley, 25 February 2016.
[25] SurfStitch ASX announcement, 3 May 2016.
[26] Statement of Claim, paragraph 83, emphasis in original. Note that the date 25 February 2015 seems to include a typographical error and should instead read 25 February **2016**.
[27] SurfStitch ASX announcement, 25 February 2016.
[28] Statement of Claim, paragraph 102, emphasis in original.
[29] SurfStitch ASX announcement, 9 June 2016.

aggregate alleged inflation price, we simply add the alleged inflation on each date due to each of the types of Material Information alleged in the Statement of Claim. The types of allegedly misstated Material Information over each period are as follows:

(a) **27 August 2015 – 24 February 2016:** Material EBITDA Information

(b) **25 February 2016 – 2 May 2016:** Material EBITDA Information and Material Revenue Information

(c) **3 May 2016 – 8 June 2016:** Material Revenue Information and Material Revised EBITDA Information

The resulting alleged inflation is summarised in Table 7 below. I have adopted the "Total alleged inflation" figures for each of the Loss Periods from the table below.

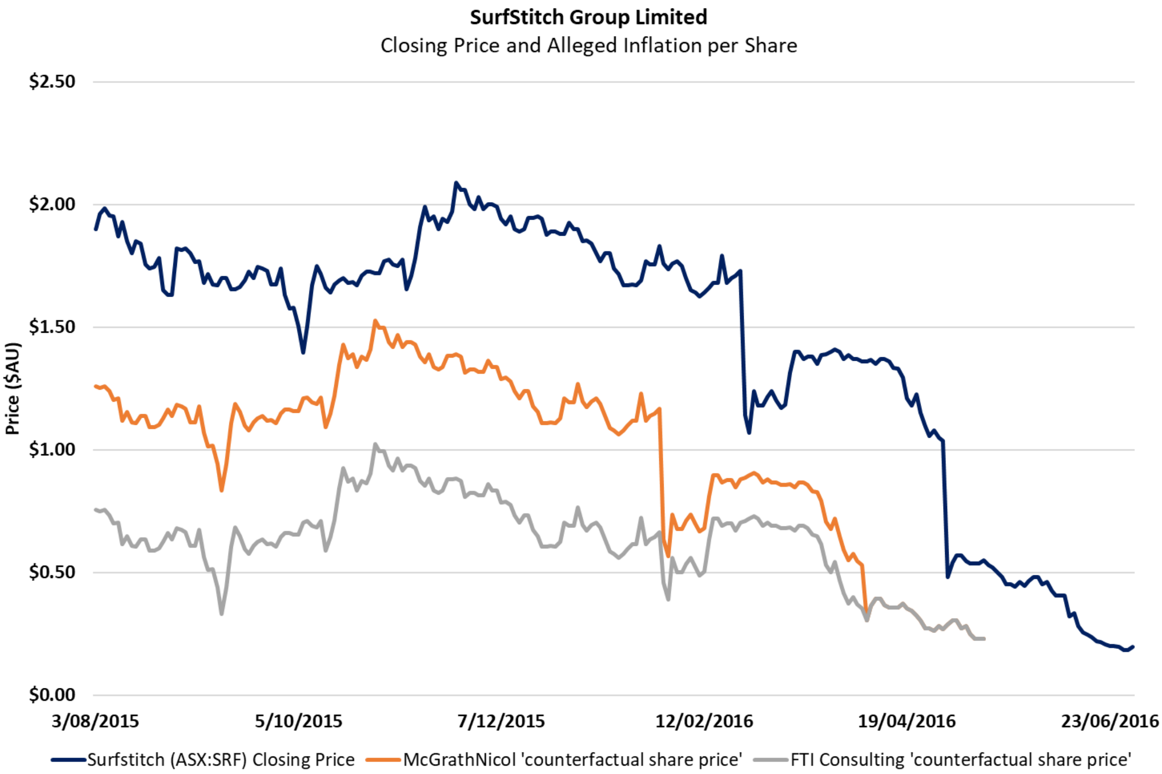
**Table 7.**

| | Period 1 | Period 2 | Period 3 |
|---|---|---|---|
| **Date period** | **27 August 2015[30] to 24 February 2016** | **25 February 2016 to 2 May 2016** | **3 May 2016 to 8 June 2016** |
| **Material EBITDA Information – Corrective Disclosures** | | | |
| *Period 1 Correction - Material EBITDA information* | $0.562 | - | - |
| *Period 2 Correction - Material Revenue Information and Material Revised EBITDA Information* | $0.504 | $0.504 | - |
| **Material Revenue Information and Material Revised EBITDA Information – Corrective Disclosures** | | | |
| *Period 3 Correction - Material Revenue Information and Material Revised EBITDA Information* | - | $0.177 | $0.177 |
| **Total alleged inflation** | **$1.066** | **$0.681** | **$0.177** |

The counterfactual share price adopting the above inflation per Loss Period is shown graphically in Figure 1 below (with a comparison to the McGrathNicol counterfactual share price).

[30] Being the start date of the first misleading event

**Figure 1.**



SurfStitch Group Limited
Closing Price and Alleged Inflation per Share
Price ($AU)
$2.50
$2.00
$1.50
$1.00
$0.50
$0.00
3/08/2015
5/10/2015
7/12/2015
12/02/2016
19/04/2016
23/06/2016
Surfstitch (ASX:SRF) Closing Price
McGrathNicol 'counterfactual share price'
FTI Consulting 'counterfactual share price'

# ANNEXURE E

# ANNEXURE E - MATCHING SHARE SALES TO THE PURCHASES OF THOSE SHARES – FIFO/LIFO

Mr Mullins and I had an initial discussion about this issue (see Annexure B). However, I was then informed by Mr Mullins that McGrathNicol were instructed to terminate the conclave. I therefore cannot consider this issue resolved.

The choice of methodology between Simplified netting, FIFO or LIFO calculations can produce materially different results from one shareholder to another. In our view, alternate methodologies should be considered in order to assess whether any shareholder is materially prejudiced from the adoption of one method over another. This may also impact whether a Group Member is in the Retention Sub-Group.

In order to determine whether the sale transactions relate to shares that were purchased during the Relevant Period, I have considered the First In First Out (**FIFO**) and Last In Last Out (**LIFO**) methodologies.

The FIFO and LIFO rules relate to the assumptions made in order to match each sale of shares with its corresponding purchase:

(a) FIFO, which assumes that the shares sold relate to the first shares purchased; and

(b) LIFO, which assumes that the shares sold relate to the last shares purchased (immediately preceding the sale).

When shares are purchased and sold, the FIFO and LIFO methodologies may produce different loss estimates. This is because under FIFO, the sale of shares is assumed to be from the opening balance of shares (or other earliest purchase), whereas under LIFO, the shares purchased most recently are assumed to be sold. However, in circumstances where shareholdings with an opening balance have sold a portion of those shares during a certain period and have then only subsequently purchased shares, the calculations under the FIFO and LIFO methodologies will produce the same loss estimate. This is because under both FIFO and LIFO methodologies, the sale of shares at the earlier date in the Loss Period will be applied against the opening balance of shares. The subsequent purchase is not offset by the earlier sale.

The following figure below shows an example of a single Group Member and demonstrates how loss is calculated using FIFO and LIFO methodologies.[31] Our Data and Analytics team performed an initial FIFO and LIFO matching exercise based on the trading data provided.[32] The first table represents the share trading data, and the FIFO and LIFO calculations are in each of the following two tables, respectively.

[31] Extract of trading data for HIN/SRN number X00060832820

**Table 8.**

| Effective Date | On Units | Off Units | Net | Batch No | Document Ref | Actor ID |
|---|---|---|---|---|---|---|
| **Opening Balance** | | | | | | |
| 5-Nov-15 | 9,875,610 | | 9,875,610 | 62589 | 2978465800 | CHESS |
| 9-Nov-15 | 324 | | 324 | 62589 | 2978465800 | CHESS |
| 13-Nov-15 | 1,279,984 | | 1,279,984 | 62589 | 2978465800 | CHESS |
| 20-Nov-15 | 210,765 | | 210,765 | 62589 | 2978465800 | CHESS |
| 23-Nov-15 | 64,735 | | 64,735 | 62589 | 2978465800 | CHESS |
| 25-Nov-15 | 15,167 | | 15,167 | 62589 | 2978465800 | CHESS |
| 1-Dec-15 | 1,798,368 | | 1,798,368 | 62589 | 3508121800 | CHESS |
| 2-Dec-15 | 1,798,368 | | 1,798,368 | 102832 | 2259 | KNEIPP_M |
| 2-Dec-15 | | (1,798,368) | (1,798,368) | 102832 | 2259 | KNEIPP_M |
| 1-Mar-16 | 303,800 | | 303,800 | 62589 | 2978465800 | CHESS |
| 2-Mar-16 | 777,600 | | 777,600 | 62589 | 2978465800 | CHESS |
| 19-Apr-16 | | (193,170) | (193,170) | 62589 | 2978465800 | CHESS |
| 20-Apr-16 | | (134,000) | (134,000) | 62589 | 2978465800 | CHESS |
| 5-May-16 | | (8,044,652) | (8,044,652) | 62589 | 2978465800 | CHESS |
| 9-May-16 | | (1,160,420) | (1,160,420) | 62589 | 2978465800 | CHESS |
| 11-May-16 | | (97,336) | (97,336) | 62589 | 2978465800 | CHESS |
| 17-May-16 | | (385,899) | (385,899) | 62589 | 2978465800 | CHESS |
| 20-May-16 | | (92,126) | (92,126) | 62589 | 2978465800 | CHESS |
| 23-May-16 | | (304,891) | (304,891) | 62589 | 2978465800 | CHESS |
| 24-May-16 | | (168,922) | (168,922) | 62589 | 2978465800 | CHESS |
| 25-May-16 | | (219,559) | (219,559) | 62589 | 2978465800 | CHESS |
| 27-May-16 | | (144,290) | (144,290) | 62589 | 2978465800 | CHESS |
| 30-May-16 | | (127,587) | (127,587) | 62589 | 2978465800 | CHESS |
| 3-Jun-16 | | (175,000) | (175,000) | 62589 | 2978465800 | CHESS |
| 6-Jun-16 | | (2,000,000) | (2,000,000) | 62589 | 2978465800 | CHESS |
| 8-Jun-16 | | (168,000) | (168,000) | 62589 | 2978465800 | CHESS |
| 14-Jun-16 | | (910,501) | (910,501) | 62589 | 2978465800 | CHESS |

For example, for the FIFO mapping exercise shown in Table 9 below, the shares sold on 2 December 2015 are matched to the first buy in the period on 5 November 2015.

**Table 9. FIFO Mapping on Transactions between 27 Aug 15 and 24 Feb 16**

| custodian | buy_date | sell_date | amount | buy_id | sell_id |
|---|---|---|---|---|---|
| X00068632820 | 27/08/2015 | | 7,337 | Opening Balance | |
| X00060832820 | 5/11/2015 | | 8,077,242 | 14383 | |
| X00060832820 | 5/11/2015 | 2/12/2015 | 1,798,368 | 14383 | 15677 |
| X00060832820 | 9/11/2015 | | 324 | 14469 | |
| X00060832820 | 13/11/2015 | | 1,279,984 | 14655 | |
| X00060832820 | 20/11/2015 | | 210,765 | 15118 | |
| X00060832820 | 23/11/2015 | | 64,735 | 15178 | |
| X00060832820 | 25/11/2015 | | 15,167 | 15280 | |
| X00060832820 | 1/12/2015 | | 1,798,368 | 15516 | |
| X00060832820 | 2/12/2015 | | 1,798,368 | 15676 | |

For example, for the LIFO mapping exercise shown in Table 10 below, the shares sold on 2 December 2015 are matched to the immediately preceding purchase on the same date (being 2 December 2015).

**Table 10. LIFO Mapping on Transactions between 27 Aug 15 and 24 Feb 16**

| custodian | buy_date | sell_date | amount | buy_id | sell_id |
|---|---|---|---|---|---|
| X00068632820 | 27/08/2015 | | 7,337 | Opening Balance | |
| X00060832820 | 5/11/2015 | | 9,875,610 | 13260 | |
| X00060832820 | 9/11/2015 | | 324 | 13261 | |
| X00060832820 | 13/11/2015 | | 1,279,984 | 13262 | |
| X00060832820 | 20/11/2015 | | 210,765 | 13263 | |
| X00060832820 | 23/11/2015 | | 64,735 | 13264 | |
| X00060832820 | 25/11/2015 | | 15,167 | 13265 | |
| X00060832820 | 1/12/2015 | | 1,798,368 | 13266 | |
| X00060832820 | 2/12/2015 | 2/12/2015 | 1,798,368 | 13267 | 13268 |

Once purchase and sale dates are matched using the FIFO and LIFO methodologies, losses for each Group Member are calculated on the share price inflation on the date of purchase less inflation on date of sale for each parcel of buys and sells that have been match.

This issue may affect the proportion of losses allocated across the group members, as the loss will be understated for those shareholders who had balances of shares prior to the start of the class period (e.g. IPO purchases).

I set out examples of the LIFO / FIFO analysis in relation to the Acquisition and Retention Methodologies below.

### Acquisition Methodology

The following example is based on the methodology described at paragraphs 2.4.3 to 2.4.10, adopting the inflation per Loss Period set out in Table 2.

(a) A share purchased between 27 August 2015 and 24 February 2016 has purchase inflation equal to $1.066 (see Table 2). There are 4 loss scenarios for such a share:

  (i) if the share was sold before 25 February 2016, its sale inflation would be $1.066, resulting in no loss;

  (ii) if the share was sold between 25 February 2016 and 2 May 2016, it has sale inflation of $0.681, resulting in a loss of $0.385 (being $1.066 less $0.681);

  (iii) if the share was sold between 3 May 2016 and 8 June 2016, it has sale inflation of $0.177, resulting in a loss of $0.889 (being $1.066 less $0.177); and

  (iv) finally, if the share was sold after 8 June 2016 (or never sold), it has zero sale inflation, resulting in a loss of $1.066.

### Retention Methodology

The following example is based on the methodology described at paragraphs 2.4.11 to 1.4.23, adopting the inflation per Loss Period set out in Table 2.

The loss for a Group Member who purchased and held shares as at 27 August 2015 and had not sold (retained) as at 9 June 2016 (applying the FIFO method) can be summarised below:

**Table 11.** [33]

| | Opening Balance | Buy / (Sell) | Closing Balance |
|---|---|---|---|
| **27 August 2015** | 1,648,691 | | 1,648,691 |
| **4 November 2015** | 1,648,691 | (183,073) | 1,465,618 |
| **26 November 2015** | 1,465,618 | 154,139 | 1,619,757 |
| **Shares held at Opening Balance on 27 August 2015 and not sold as at 9 June 2016** | 1,465,618 | | |

For any shares held on 27 August 2015 that were retained as at 9 June 2016:

(a) Number of shares multiplied by

(b) the True Value (price at which they would have been sold), being $0.67;

(c) *less* the price the shareholder could have sold their shares as at 9 June 2016, being $0.32 (the closing price as at 9 June 2016):

*1,465,618 x ($0.67 less $0.32 = $0.35) = $512,966.30*

For any shares held on 27 August 2015 that were sold between 27 August 2015 and 8 June 2016:

(a) Number of shares multiplied by

(b) the True Value (price at which they would have been sold), being $0.67;

[33] This example is from McConnell Report

(c) *less* the price at which the shares were sold, being the share price on 4 November 2016, being $1.75:

*183,073 x ($0.67 less $1.75 = -$1.08) = ($197,718.84) (a gain)*

The total loss on the 1,648,691 Retention Methodology shares is the combined loss on those shares retained to 9 June 2016 and those sold prior to 9 June 2016:

*$512,966.30 + ($197,718.84) = $315,247.46*

The loss for the Retention Sub-Group shares in this example is $315,247.46.

I understand that the issue of matching sales to purchases was mentioned in the decision of *HIH Insurance (In Liq)* [2017] NSWSC 380. In that case, his Honour determined that LIFO should be adopted. I have adopted the LIFO methodology for my calculations.

# ANNEXURE F

**Analysis of allocation of inflation for SurfStitch Group Limited**

This analysis relies on the event study results presented by Ferrier Hodgson in their 29 March 2018 analysis of SurfStitch Group Limited ("SRF" or the "Company").

Ferrier Hodgson has found the following market-adjusted price declines in response to alleged disclosures based on an event study analysis:

| Date | Market Adjusted Price Decline |
|---|---|
| **25/02/2016** | $0.562 |
| **03/05/2016** | $0.504 |
| **09/06/2016** | $0.177 |

The market-adjusted price declines represent alleged inflation dropping out of the stock price. The remaining question is, *over what period was this alleged inflation part of the stock price?*

The following analysis looks at the allegedly misstated and corrected information over the class period to apply the market-adjusted price declines over the appropriate periods.

## Material EBITDA Information

The statement of claim describes the "Material EBITDA Information" as follows:

"During the period commencing on 27 August 2015 and concluding 2 May 2016 **(the First Relevant Period),** an officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A15 million and $18 million **(Material EBIDTA Information).**"[1]

On 27 August 2015, the Company announced its 2015 full year results and stated that it expected FY2016 EBITDA in the range from A$15 million to A$18 million, which is growth of over 100% from FY2015. It also stated that it expected the second half of FY2016 to have stronger EBITDA results than the first half.[2]

The Material EBITDA Information was corrected in two partial corrective disclosures:

1. On 25 February 2016, the Company announced 1HFY16 results. In this announcement, the Company did not confirm its FY2016 EBITDA guidance. It stated "Strong double digit revenue growth is expected to continue with strong gross profit margins. SurfStitch Group will pursue demonstrated opportunities around accelerated content investment. Given the pace of change and long term opportunities presented to the business, Management and the Board believe it is no longer prudent to focus on a defined EBITDA range. Instead, EBITDA growth will be flexed based on investment around the Global content strategy."[3]

[1] Statement of Claim, paragraph 69, emphasis in original.
[2] SurfStitch ASX announcement, 27 August 2015.
[3] SurfStitch ASX announcement, 25 February 2016.

The price declined on this announcement and market analysts noted that "[r]emoval of guidance spooked the market"[4] and that the "change in guidance raised concerns."[5] However, this announcement is a *partial* corrective disclosure, not a full corrective disclosure, because it did not disclose the Material EBITDA Information, as defined by the Statement of Claim that "EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A15 million and $18 million."

In fact, upon the Company withdrawing its previous guidance, analysts did not adjust their EBITDA estimates by much. J.P. Morgan stated "we believe SRF will still reach the guidance range nonetheless" and included in their model a FY2016 EBITDA estimate of A$19 million.[6] Morgan Stanley included in their model a FY2016 EBITDA estimate of A$21 million.[7] Bell Potter reduced their FY2016 EBITDA estimate by only 12.6%, to A$19.2 million.

2. On 3 May 2016, the Company announced revised FY2016 EBITDA guidance in a range of $A2 million to $A3 million.[8] This range can be considered to be "significantly less than between $A15 million and $18 million," and therefore to be the final corrective disclosure related to the Material EBITDA Information.

Based on these two partial corrective disclosures, alleged inflation due to the Material EBITDA Information over the period from 27 August 2015 through 2 May 2016 (or, the First Relevant Period) is as follows:

- **27 August 2015 – 24 February 2016:** alleged inflation = $0.562 + $0.504, or **$1.066**
- **25 February 2016 – 2 May 2016:** alleged inflation = **$0.504**

## Material Revenue Information and Material Revised EBITDA Information

The statement of claim describes the "Material Revenue Information" as follows:

"During the period commencing on 25 February 2015 and concluding 8 June 2016 **(the Second Relevant Period),** an officer or officers of SRF had, or ought reasonably to have, come into possession of information that the IH FY16 Financial Report had overstated SRF's revenue, gross profit and profit before tax by approximately $20.3 million **(Material Revenue Information).**"[9]

As discussed above, on 25 February 2016, the company announced 1HFY16 results, including revenue of A$144.9 million, gross profit of A$69.9 million, and profit before tax of A$8.1 million.[10] While this was partially corrective to the Material EBITDA Information, it was also a misstatement of the Material Revenue Information.

The statement of claim describes the "Material Revised EBITDA Information" as follows:

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[4] J.P.Morgan, 25 February 2016.
[5] Morgan Stanley, 25 February 2016.
[6] J.P.Morgan, 25 February 2016.
[7] Morgan Stanley, 25 February 2016.
[8] SurfStitch ASX announcement, 3 May 2016.
[9] Statement of Claim, paragraph 83, emphasis in original. Note that the date 25 February 2015 seems to include a typographical error and should instead read 25 February **2016**.
[10] SurfStitch ASX announcement, 25 February 2016.

"During the period commencing on 3 May 2016 and concluding 8 June 2016 **(the Third Relevant Period),** an officer or officers of SRF had, or ought reasonably to have, come into possession of information that SRF's EBITDA for the financial year ending 30 June 2016 would be, or would be expected to be, significantly less than between $A2 million and A$3 million **(Material Revised EBITDA Information).**"[11]

As discussed above, on 3 May 2016, the Company announced revised EBITDA guidance in a range of $A2 million to $A3 million. While this announcement is corrective to the Material EBITDA Information, it also is an additional misstatement of the Material Revised EBITDA Information.

On 9 June 2016, the Company's final corrective disclosure announced that $20.3 million of 1HFY 2016 revenue would be reversed and that, as a result, FY2016 EBITDA would likely be a loss of $17.3 million to $18.3 million.[12]

The 9 June 2016 announcement was corrective to both the Material Revenue Information and the Material Revised EBITDA Information. Since the EBITDA guidance in the announcement was a **result** of the revenue reversal, the two types of information are directly related and there is no way to attempt to parse the price movement at the time of the disclosure into portions attributable to each of the two types of information. Therefore, we attribute the full amount of associated price inflation ($0.177) starting at the earliest date of the two misstatements, 25 February 2016.

Based on this, alleged inflation due to the Material Revenue Information and the Material Revised EBITDA Information was **$0.177** over the period from **25 February 2016 through 8 June 2016**.

## Aggregate Alleged Inflation

To calculate the daily aggregate alleged inflation series, we simply add the alleged inflation on each date due to each of the types of Material Information alleged in the Complaint.

The types of allegedly misstated Material Information over each period are as follows:

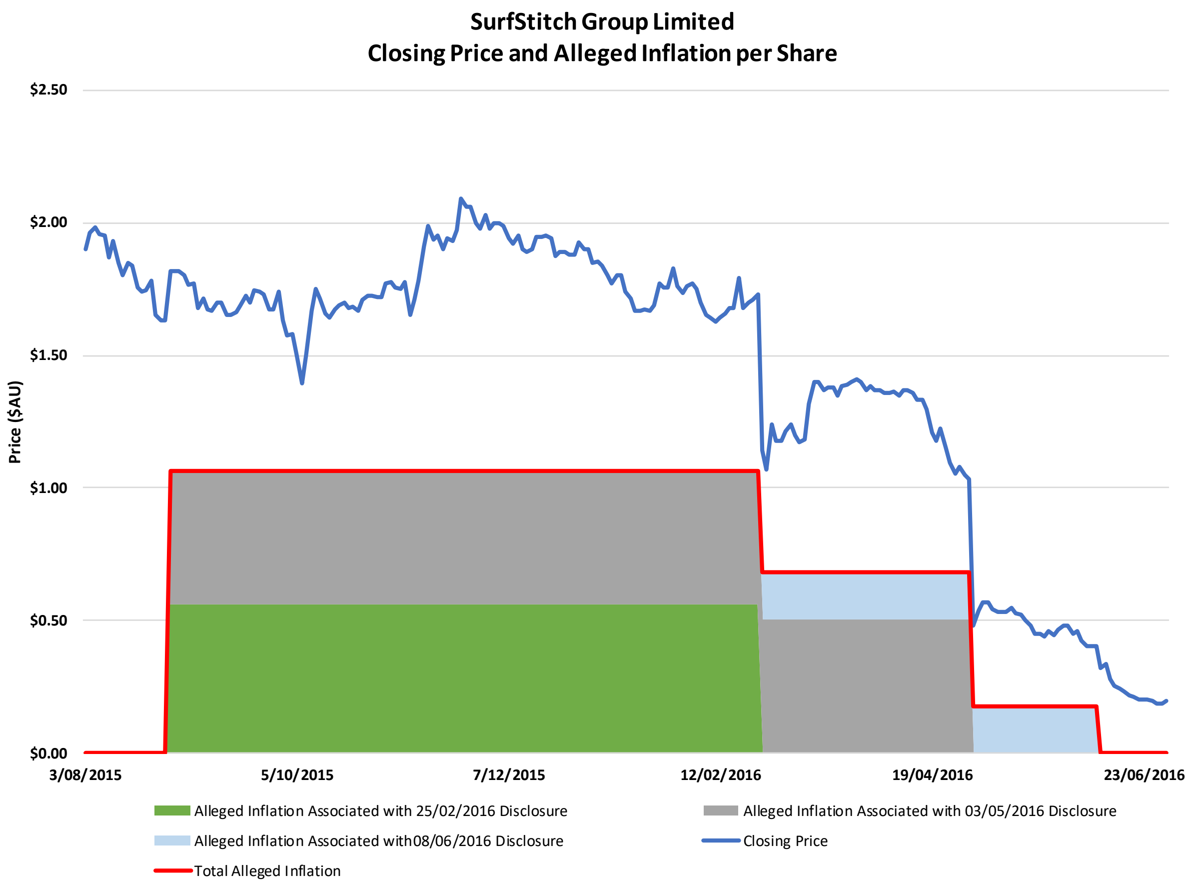
- 27 August 2015 – 24 February 2016: Material EBITDA Information
- 25 February 2016 – 2 May 2016: Material EBITDA Information and Material Revenue Information
- 3 May 2016 – 8 June 2016: Material Revenue Information and Material Revised EBITDA Information

The resulting alleged inflation is as follows:

- 27 August 2015 – 24 February 2016: alleged inflation = $0.562 + $0.504, or **$1.066**
- 25 February 2016 – 2 May 2016: alleged inflation = $0.504 + $0.177, or **$0.681**
- 3 May 2016 – 8 June 2016: alleged inflation = **$0.177**

The alleged inflation over time is shown graphically on the following page.

[11] Statement of Claim, paragraph 102, emphasis in original.
[12] SurfStitch ASX announcement, 9 June 2016.




## Applying Aggregate Alleged Inflation

To calculate the alleged damages on each share purchased, the aggregate inflation would be applied on both the purchase and the sale date. For each share, the damage claim is equal to the alleged inflation at the time of purchase less the alleged inflation at the time of sale.

For example, a share purchased between 27 August 2015 and 24 February 2016 has purchase inflation equal to $1.066. There are 4 damage scenarios for such a share:

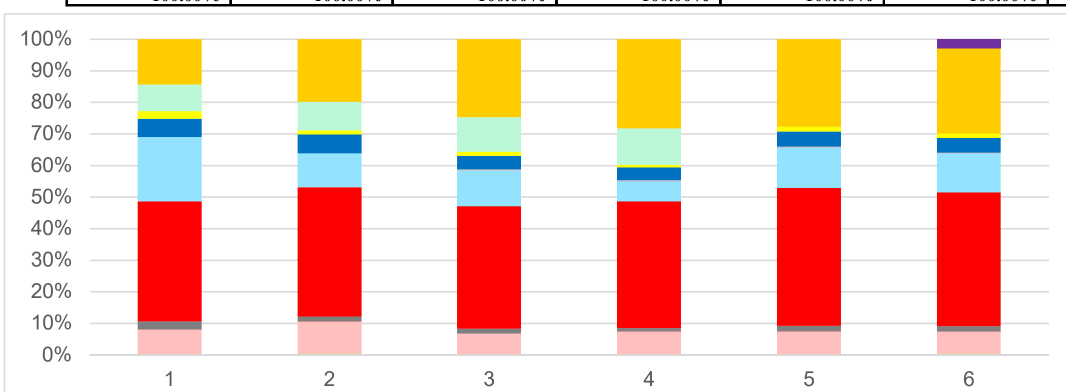
- if the share was sold before 25 February 2016, its sale inflation would be $1.066, resulting in no damage claim;
- if the share was sold between 25 February 2016 and 2 May 2016, it has sale inflation of $0.681, resulting in a damage claim of $0.385;
- if the share was sold between 3 May 2016 and 8 June 2016, it has sale inflation of $0.177, resulting in a damage claim of $0.889; and
- finally, if the share was sold after 8 June 2016 (or never sold), it has zero sale inflation, resulting in a damage claim of $1.066.

This same type of calculation applies to any shares purchased before 8 June 2016.

# ANNEXURE G

## Scenario Analysis: Ferrier Hodgson Methodology and Various Adjustments

| | Name (and dataset) | Ferrier Hodgson Loss ($) | FTI Event Study Loss ($) | Methodology Correction Loss ($) | Methodology Correction + FTI Event Loss ($) | FIFO - Offset Gains Loss ($) | FIFO - no offset Loss ($) | LIFO - Offset Gains Loss ($) | LIFO - no offset Loss ($) | Range |
|---|---|---|---|---|---|---|---|---|---|---|
| Institutional | Bennalong | 0 | 0 | 0 | 0 | 0 | 83,952 | 0 | 71,550 | |
| Institutional | FRT | 250,093 | 331,800 | 773,751 | 803,328 | 773,751 | 773,751 | | | |
| Institutional | RBC | 145,983 | 151,584 | 343,993 | 329,882 | 0 | 0 | | | |
| Institutional | Damian Phair | 42,000 | 21,337 | 42,000 | 21,337 | 42,000 | 42,000 | | | |
| Individual | Robert Jarrett | 100,599 | 100,198 | 133,082 | 116,700 | 133,082 | 133,082 | | | |
| Individual | Robert Marich | 0 | 0 | 9,826 | 10,203 | 9,826 | 9,826 | | | |
| Individual | Michael Bower | 352,800 | 179,231 | 352,800 | 179,231 | 352,800 | 352,800 | | | |
| Individual | Craig Robertson | 0 | 0 | 144 | 150 | 144 | 144 | | | |
| Individual | Jo Chipperfield (Argo) | 659,660 | 684,874 | 1,217,220 | 1,140,779 | 1,217,220 | 1,217,220 | | | |
| Individual | Phillip and Glenda Ryan | 43,671 | 24,565 | 45,246 | 25,365 | 45,089 | 45,089 | | | |
| Individual | Aleksander Simonovski | 1,173 | 1,554 | 2,286 | 2,373 | 2,286 | 2,286 | | | |
| Individual | James Gordon | 134,370 | 171,092 | 202,410 | 205,658 | 202,410 | 202,410 | | | |
| Individual | Carlo Manfredi | 5,421 | 5,626 | 8,109 | 6,992 | 5,066 | 10,352 | | | |
| | **Total** | **1,735,769** | **1,671,861** | **3,130,866** | **2,841,998** | **2,783,674** | **2,872,912** | | | |
| | | **Loss (%)** | **Loss (%)** | **Loss (%)** | **Loss (%)** | **Loss (%)** | **Loss (%)** | **Loss (%)** | **Loss (%)** | |
| Institutional | Bennalong | - | - | - | - | - | 2.92% | | | 0.00% - 2.92% |
| Institutional | FRT | 14.41% | 19.85% | 24.71% | 28.27% | 27.80% | 26.93% | | | 14.41% - 28.27% |
| Institutional | RBC | 8.41% | 9.07% | 10.99% | 11.61% | - | - | | | 0.00% - 11.61% |
| Institutional | Damian Phair | 2.42% | 1.28% | 1.34% | 0.75% | 1.51% | 1.46% | | | 0.75% - 2.42% |
| Individual | Robert Jarrett | 5.80% | 5.99% | 4.25% | 4.11% | 4.78% | 4.63% | | | 4.11% - 5.99% |
| Individual | Robert Marich | - | - | 0.31% | 0.36% | 0.35% | 0.34% | | | 0.00% - 0.36% |
| Individual | Michael Bower | 20.33% | 10.72% | 11.27% | 6.31% | 12.67% | 12.28% | | | 6.31% - 20.33% |
| Individual | Craig Robertson | - | - | 0.00% | 0.01% | 0.01% | 0.01% | | | 0.00% - 0.01% |
| Individual | Jo Chipperfield (Argo) | 38.00% | 40.96% | 38.88% | 40.14% | 43.73% | 42.37% | | | 38.00% - 43.73% |
| Individual | Phillip and Glenda Ryan | 2.52% | 1.47% | 1.45% | 0.89% | 1.62% | 1.57% | | | 0.89% - 2.52% |
| Individual | Aleksander Simonovski | 0.07% | 0.09% | 0.07% | 0.08% | 0.08% | 0.08% | | | 0.07% - 0.09% |
| Individual | James Gordon | 7.74% | 10.23% | 6.46% | 7.24% | 7.27% | 7.05% | | | 6.46% - 10.23% |
| Individual | Carlo Manfredi | 0.31% | 0.34% | 0.26% | 0.25% | 0.18% | 0.36% | | | 0.18% - 0.36% |
| | **Total** | **100.00%** | **100.00%** | **100.00%** | **100.00%** | **100.00%** | **100.00%** | **-** | **-** | |



**Methodologies:**

1 The Ferrier Hodgson figures are as contained in Nakali POD - Annexure B - Annexures SI and SJ.Xlsx

2 The FTI Event Study methodology uses the Ferrier Hodgson methodology and adjusts only to replace the "Share Price Inflation" figures of $0.474, $0.479, with figures calculated by FTI: $0.495, $0.497, and $0.085, respectively.

3 The Methodology correction uses the Ferrier Hodgson methodology, including the Ferrier Hodgson "Share Price Inflation" figures, and adjusts to include d additional disclosures if the shares were held over more than one disclosure (and corrects to not offset for sale inflation).
For example, FRT purchased shares during period 1 and sold those shares during period 3. The Ferrier Hodgson calculation calculates damages on those sh $0.474 less $0.168, because the shares were held over the first disclosure (incurring damages of $0.474) and were sold before the last disclosure (therefore benefitting from inflation of $0.168). The methodology has been corrected to calculate damages as $0.474 plus $0.479, since the shares were held over disclosures 1 and 2,therefore were damaged by both. No offset is needed for the time of sale.

4 The Methodology correction + FTI Event Study applies both adjustments 2 and 3.

5 The FIFO method uses the "Share Price Inflation" from the Ferrier Hodgson analysis, but calculates share sales using FIFO ("first in, first out"). This incluc held prior to period 1. Once purchase and sale dates are matched up, damages are calculated on the shares as purchase inflation less sale inflation.
If shares held prior to Period 1 were sold, any benefit received from inflation is used as an offset to damages on shares purchased in Period 1, 2, or 3.

6 The FIFO method uses the "Share Price Inflation" from the Ferrier Hodgson analysis, but calculates share sales using FIFO. This includes any shares held prior to period 1. Once purchase and sale dates are matched up, damages are calculated on the shares as purchase inflation less sale inflation.
No offset is calculated for the sale of shares purchased prior to Period 1.

7 The LIFO method uses the "Share Price Inflation" from the Ferrier Hodgson analysis, but calculates share sales using LIFO ("Last in, first out"). This inclu held prior to period 1. Once purchase and sale dates are matched up, damages are calculated on the shares as purchase inflation less sale inflation.
If shares held prior to Period 1 were sold, any benefit received from inflation is used as an offset to damages on shares purchased in Period 1, 2, or 3.

8 The LIFO method uses the "Share Price Inflation" from the Ferrier Hodgson analysis, but calculates share sales using LIFO. This includes any shares held prior to period 1. Once purchase and sale dates are matched up, damages are calculated on the shares as purchase inflation less sale inflation.
No offset is calculated for the sale of shares purchased prior to Period 1.

# ANNEXURE H

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12 November 2019

Gavin Rakoczy
Special Counsel
King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dear Gavin

**TW McConnell Pty Ltd v Surfstitch Group Limited: Proceeding 2017/193375**
**Nakali Pty Ltd & Ors v Surfstitch Group Limited: Proceeding 2017/347082**

You have instructed us to confer with Mr Greg Meredith of KPMG in relation to the quantification of shareholder losses in the above matter. Mr Meredith has prepared two reports in relation to this matter, being the Nakali Report dated 29 March 2018 (**Nakali Report**), and the McConnell Report dated 22 August 2018 (**McConnell Report**).

We have been provided the following documents related to the quantification of losses:

- Surfstitch Group – ASX Announcement – 27 August 2015;
- Surfstitch Group – shareholder registry and trading records;
- Nakali Report;
- McConnell Report; and
- Greg Meredith's volume analysis contained in Annexures SI and SJ of the Nakali Report (Microsoft Excel format).

The documents have been reviewed by FTI Consulting, including Dawna Wright of the forensic accounting team, and Erica Rose from our economics team.

We understand there is an agreed settlement. Accordingly, we have approached this exercise with the objective of deriving a reasonably robust and defensible methodology that does not prejudice one shareholder / group member over another.

In preparation for the conference, we have identified a list of issues for discussion with Mr Meredith. For convenience, we have listed the issues in a table format, reconciling our opinions to those of Mr Meredith where possible, based on his reports. We have identified the issues with reference to those more general issues that apply to both the Nakali claim and the "McConnell Acquisition sub-group", and those that apply only to the "McConnell Retention sub-group". I have attached the table of issues at Annexure A.

For convenience in facilitating the discussion, I have also attached at Annexure B an 'aide memoire' setting out the relevant timelines for each of the claims.

We can be available to meet with Mr Meredith at a mutually convenient time. I would suggest that we then prepare a short joint report to be provided to our respective instructing solicitors. The attached table may be a format that could be adopted, subject to discussion with Mr Meredith.

Yours sincerely

**Dawna Wright**
Senior Managing Director
**FTI Consulting (Australia) Pty Limited**

Enc.

## Annexure A – summary of issues for discussion with Mr Meredith

### General issues - Nakali and McConnell Acquisition sub-group

We have identified the following issues for discussion regarding the Nakali calculations and the McConnell Acquisition sub- group calculation below:

| Issue | KPMG – Meredith opinion | FTI Consulting – Wright opinion |
|---|---|---|
| **Event study - event window days** | Period 1 – 4 days (24/2/16 – 1/3/16)<br><br>Period 2 – 2 days (2/5/16 – 4/5/16)<br><br>Period 3 – 5 days (8/6/16 – 16/6/16) | Period 1 – 3 days (24/2/16 – 29/2/16)<br><br>Period 2 – 2 days (2/5/16 – 4/5/16)<br><br>Period 3 – 1 day (9/6/16)<br><br>In our view, an incorrect event window was adopted by Mr Meredith in relation to period 1 and 3. Because the discrepancy is significantly greater in Period 3 than the other two periods, it may affect the proportionality of losses allocated across the group members (to the extent that there are shareholders with losses attributed mostly to Period 3).<br><br>We do not consider the Period 3 event window to extend beyond 1 day, due to the fact the price movement on day 2 was not statistically significant. This indicates that the price fully incorporated the news in one day, and that subsequent price movements in days 3 and 4 were likely due to the release of other information or other factors.<br><br>FTI's event study is based on a market model (linear regression analysis) of the Surfstitch daily log returns run on the daily log returns of the ASX All Ordinaries Index (AS30) from 25/02/2015-24/02/2016 ("estimation window"). FTI's calculations rely on a statistical significance threshold of 5%, or a 95% confidence interval. |
| **Share price response amount** | Period 1 – $0.562<br><br>Period 2 – $0.504<br><br>Period 3 – $0.177 | Period 1 – $0.495<br><br>Period 2 – $0.497<br><br>Period 3 – $0.085 |

| Issue | KPMG – Meredith opinion | FTI Consulting – Wright opinion |
| --- | --- | --- |
| | | The response amount differs due to the discrepancy in window days explained above.<br><br>Mr Meredith's inflation value is driven by the long (5-day) event window adopted. Based on the stock price movements and a statistical analysis, there is no justification for the longer window. |
| **Attribution percentages** | Period 1 – 85%<br><br>Period 2 – 95%<br><br>Period 3 – 95% | Period 1 – 100%<br><br>Period 2 – 100%<br><br>Period 3 – 100%<br><br>We have not used Mr Meredith's "attribution" percentages, since they seem to be arbitrarily chosen. We agree that it is generally necessary to arrive at an opinion of the share price inflation to be applied to the assessment of losses. However, the attribution requires a detailed analysis to arrive at the appropriate percentage to use.<br><br>In the absence of the appropriate analysis, we would adopt 100% attribution, rather than an arbitrary percentage. However, given that Mr Meredith has attributed a high proportion of the inflation, and it is similar in each period, this issue is unlikely to have a material impact on the proportion of losses allocated across the group members. |
| **Price inflation** | Loss Period 1 - $0.477<br><br>Loss Period 2 - $0.479<br><br>Loss Period 3 - $0.168 | Price inflation would need to be calculated by reference to all 3 correcting disclosures rather than only the first. Mr Meredith's methodology calculates the loss for each period but does not include the cumulative effect for shares held across multiple periods (because Mr Meredith's inflation calculation is not a cumulative figure). The proportionality of losses allocated across group members may be affected by this issue, as the loss will be understated (relative to other group members) for those group members who have held their shares from Period 1 through to Period 3. |
| **Consideration of opening balances**<br><br>**and** | n/a | The usual methodology for an assessment of loss caused by share price inflation is to calculate the inflation on the shares upon purchase, offset by gains resulting from inflation on the share price when the shares were sold.<br><br>The usual method for considering which sales apply to the class period and for matching the sales to the purchases is to perform LIFO ("Last in, first out") and / or FIFO calculations. |

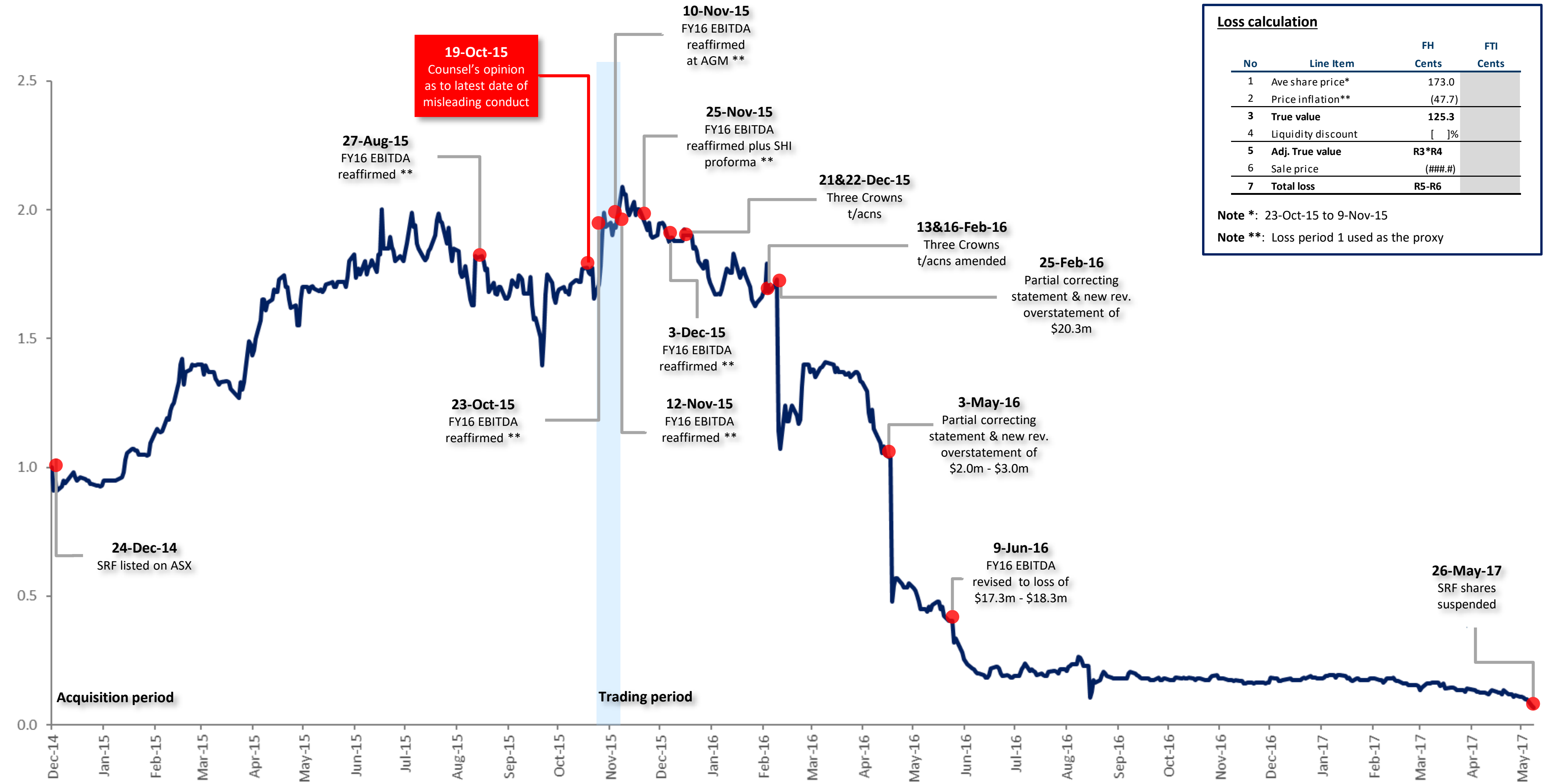
| Issue | KPMG – Meredith opinion | FTI Consulting – Wright opinion |
|---|---|---|
| **FIFO or LIFO methodology** | | Mr Meredith's methodology is highly simplistic – it considers all shares purchased during the period less the effect of all shares sold during the period. It does not consider whether some of the shares sold during the period may have been purchased prior to the start of the period (i.e. represents an opening balance at the start of the period), and therefore do not meet the definition of the applicable shares.<br><br>The LIFO method would use the "Share Price Inflation" from Mr Meredith's analysis, but calculate share sales using LIFO. This includes shares held prior to period 1. Once purchase and sale dates are matched, damages are calculated on the shares as inflation on date of purchase less inflation on date of sale. If shares held prior to Period 1 were sold, any benefit received from inflation is used as an offset to losses on shares purchased in Period 1, 2, or 3.<br><br>This issue may affect the proportion of losses allocated across the group members, as the loss will be understated for those shareholders who had balances of shares prior to the start of the class period (e.g. IPO purchases). |
| **Reduction of loss for profit made on shares sold during the inflation period** | n/a | This will need to be re-calculated by reference to all 3 correcting disclosures rather than only the first. |

### McConnell Retention sub-group

We have identified the following issues for discussion regarding the McConnell Retention sub- group calculation below:

| Issue | KPMG – Meredith opinion | FTI Consulting – Wright opinion |
|---|---|---|
| **Re-calculation of loss based on 27 August 2015 (Last Acquisition Date)** | Those who already held shares on 23 October 2015 and retained those shares during the above periods relying on the forecasts and statements issued by the Company. | Those who already held shares on 27 August 2015 and retained those shares during the above periods relying on the forecasts and statements issued by the Company. |
| **Average share price** | The average share price of the Company between 23 October 2015 and 9 November 2015 traded on the ASX of approximately $1.73 per share. | Require discussion as to whether an average share price is appropriate.<br><br>If so, the average share price of the Company will need to be adjusted to reflect the period beginning on 27 August 2015. |
| **Liquidity discount** | "1.3.9 - In estimating loss for the Retention Sub-Group, if there is a large number of shares to be sold between 23 October 2015 and 9 November 2015 this would require consideration of whether an Illiquidity / blockage discount should be applied to the average share price.<br><br>1.3.10 - In assessing a "robust, rough and ready" estimate of loss I have not considered an illiquidity / blockage discount. To the extent a discount should be applied, the loss assessment would decrease." | The liquidity discount will need to be discussed with Mr Meredith. Opinion may change with the re-calculation of loss being from 27 August 2015 (Last Acquisition Date). Determining an appropriate discount would require further information and analysis. |
| **Price inflation** | Price inflation is calculated by reference to only the first corrected disclosures. Mr Meredith's methodology calculates the loss for each period but does not include the cumulative effect for shares held across multiple periods. | Price inflation would need to be calculated by reference to all 3 correcting disclosures rather than only the first. |

# Retention sub-group




**Loss calculation**

| No | Line Item | FH Cents | FTI Cents |
|---|---|---|---|
| 1 | Ave share price* | 173.0 | |
| 2 | Price inflation** | (47.7) | |
| 3 | **True value** | **125.3** | |
| 4 | Liquidity discount | [ ]% | |
| 5 | **Adj. True value** | **R3*R4** | |
| 6 | Sale price | (###.#) | |
| 7 | **Total loss** | **R5-R6** | |

**Note ***: 23-Oct-15 to 9-Nov-15

**Note ****: Loss period 1 used as the proxy

**Note ***: Latest date by which SGL can be said to have been aware that information previously disclosed to the market was inaccurate

**Note ****: EBITDA FY16 Fcst: Excl. SHI - $15m - $18m; Incl SHI $18m-$22m (pro-forma)

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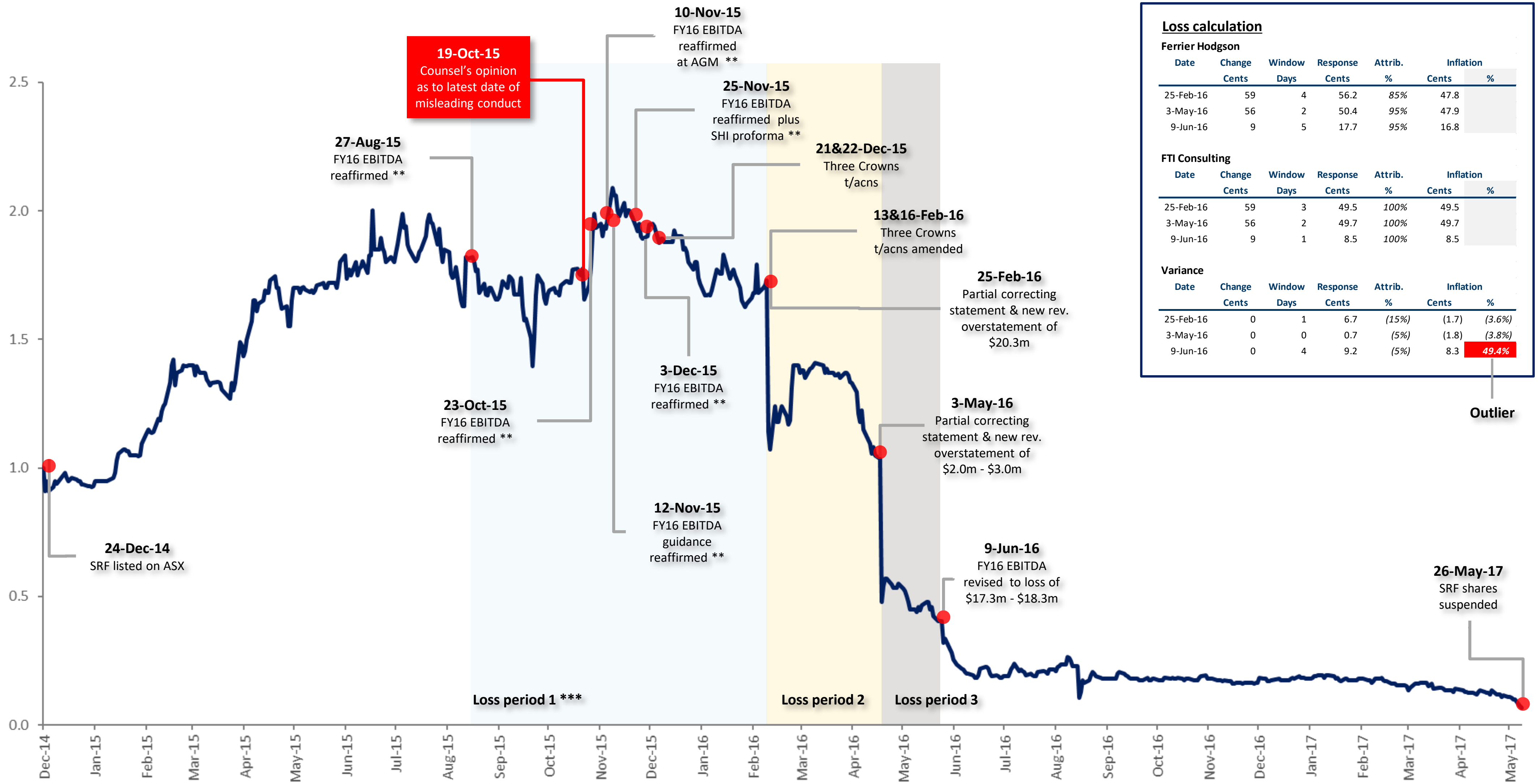
# Acquisition sub-group




**Loss calculation**

**Ferrier Hodgson**

| Date | Change Cents | Window Days | Response Cents | Attrib. % | Inflation Cents | Inflation % |
|---|---|---|---|---|---|---|
| 25-Feb-16 | 59 | 4 | 56.2 | *85%* | 47.8 | |
| 3-May-16 | 56 | 2 | 50.4 | *95%* | 47.9 | |
| 9-Jun-16 | 9 | 5 | 17.7 | *95%* | 16.8 | |

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| Date | Change Cents | Window Days | Response Cents | Attrib. % | Inflation Cents | Inflation % |
|---|---|---|---|---|---|---|
| 25-Feb-16 | 59 | 3 | 49.5 | *100%* | 49.5 | |
| 3-May-16 | 56 | 2 | 49.7 | *100%* | 49.7 | |
| 9-Jun-16 | 9 | 1 | 8.5 | *100%* | 8.5 | |

**Variance**

| Date | Change Cents | Window Days | Response Cents | Attrib. % | Inflation Cents | Inflation % |
|---|---|---|---|---|---|---|
| 25-Feb-16 | 0 | 1 | 6.7 | *(15%)* | (1.7) | *(3.6%)* |
| 3-May-16 | 0 | 0 | 0.7 | *(5%)* | (1.8) | *(3.8%)* |
| 9-Jun-16 | 0 | 4 | 9.2 | *(5%)* | 8.3 | ***49.4%*** |

**Note *:** Latest date by which SGL can be said to have been aware that information previously disclosed to the market was inaccurate

**Note **:** EBITDA FY16 Fcst: Excl. SHI - $15m - $18m; Incl SHI $18m-$22m (pro-forma)

**Note ***:** McConnell pleads that Loss Period 1 commences on 23 October 2015

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# ANNEXURE I

**Purchase Date**

| Sale date | Before 27-Aug-15[1, 2] | 27-Aug-15 to 24-Feb-16 | 25-Feb-16 to 2-May-16 | 3-May-16 to 8-Jun-16 | After 8-Jun-16 |
|---|---|---|---|---|---|
| Before 27-Aug-15 | No loss | | | | |
| 27-Aug-15 to 24-Feb-16 | 67 cents less sale price | No loss | | | |
| 25-Feb-16 to 2-May-16 | 67 cents less sale price | 38.5 cents | No loss | | |
| 3-May-16 to 8-Jun-16 | 67 cents less sale price | 88.9 cents | 50.4 cents | No loss | |
| After 8-Jun-16 | 67 cents less 32 cents | 106.6 cents | 68.1 cents | 17.7 cents | No loss |
| Not sold | 67 cents less 32 cents | 106.6 cents | 68.1 cents | 17.7 cents | No loss |

**Note 1: Shares purchased before 27-Aug-15**

A shareholder must have relied on ASX announcements on and after 27 August 2015 as a pre-condition of loss.

**Note 2: Shares purchased before 27-Aug-15**

No loss will be incurred if the shares were sold subsequently between 27 August 2015 and 8 June 2015 for an amount in excess of 67 cents per share.